

From: [Bloomberg Law Daily Labor Report](#)
To: [Ring, John](#)
Subject: First Move: Acosta Meeting Eyed Amid Controversy
Date: Monday, December 17, 2018 7:04:15 AM



What you need to know to start your day.

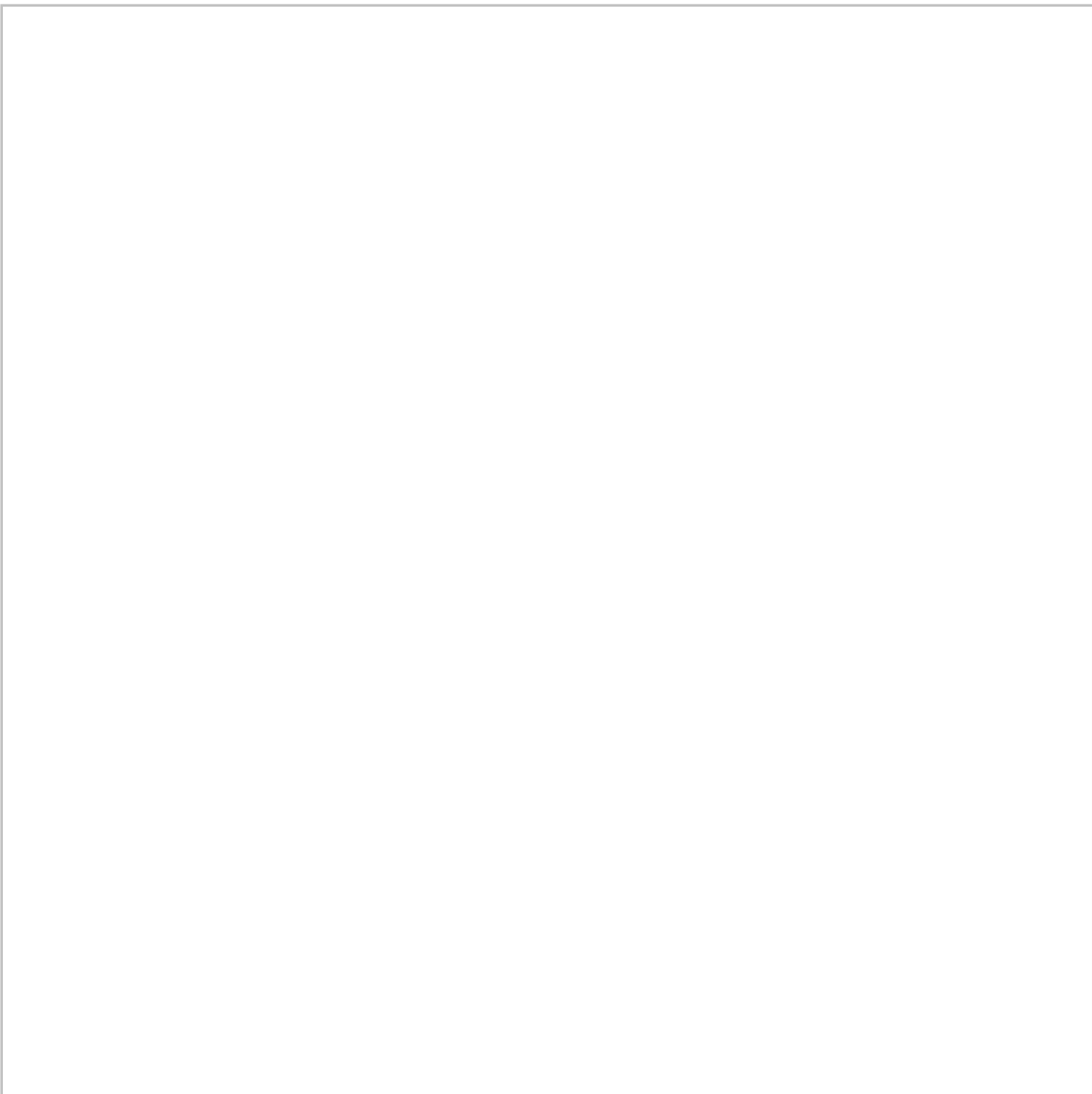
Acosta Meeting Eyed Amid Controversy



By [Patricio Chile](#)

ACOSTA MEETING IN FOCUS

Who did Labor Secretary Alexander Acosta huddle with in the days before a news story sparked some calls for him to step down? [Punch in](#) with Chris Opfer and Jaclyn Diaz to find out.



Labor Secretary Alex Acosta is dealing with the fallout of a Miami Herald report on his role in a Florida hedge fund manager's criminal case.
J M WATSON/AFP/Getty Images

Chris and Jaclyn also have an update on the AFL-CIO's future of work commission and a Labor Department visa fraud crack down. Look for that and some holiday party tips in this week's edition of the weekly labor and employment news column.

OTHER STORIES WE'RE WATCHING

- The **Equal Employment Opportunity Commission** won't be firing on all cylinders if the government shuts down later this week. In fact, the agency would scale back its staff and contract personnel of 2,078 to only 103 staffers, some of whom won't be functioning in a full-time capacity, Paige

Smith [reports](#).

- Donald Trump has outpaced his four most-recent predecessors in selecting judges rated “not qualified” by the **American Bar Association** at this point in a presidential term. Patrick Gregory has the [story](#).
- Insurers caring exclusively for retirees is yesterday’s news. Insurance companies are rewriting the rules of **pension buyouts** by taking existing staff off employers’ hands now. Read Warren Rojas’ examination of pension risk transfers [here](#).
- The **AFL-CIO** is pondering how to solidify its future, and its Commission on the **Future of Work and Unions** is looking at what the federation should look like and how to plan ahead in an ever-changing economy. Andrew Wallender will have the story.

IN THE COURTS

Looking for Latest Cases? Our feed is now updated in real time on your Daily Labor Report home page under the “In Brief” tab. The feed is searchable, and you can set alerts to get instant notification of court decisions on your topics and/or jurisdictions of interest. In addition, every day’s case summaries appear, in full, in your afternoon Highlights email. Manage your email preferences by clicking in the envelop icon in the upper right corner.

AROUND THE WEB

- Over two-thirds of those who reported workplace sexual harassment faced **retaliation**, and 64 percent of such charges are linked to **job loss**, according to a [report](#) released by the University of Massachusetts Amherst’s Center for Employment Equity.
- East African immigrant workers for Amazon in Minneapolis are rallying for better working conditions, [Vox reports](#).
- Ontario Premier Doug Ford’s government will recall the legislature this week to enact legislation to keep power workers on the job, an official [told the CBC](#).

For all of today’s Bloomberg Law headlines, visit [Daily Labor Report](#)



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Bloomberg Law



DAILY LABOR REPORT®

Highlights

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TOP STORIES

[Uber Can't Bar Workers From Discussing Lawsuits: NLRB Lawyer \(1\)](#)

By Robert Iafolla

Uber Technologies Inc. violated federal labor law when it told employees not to talk about ongoing wage lawsuits against the company with co-workers, the news media, or other third-parties, the National Labor Relations Board's legal advice unit said.

[Government Shutdown Could Snag EEOC Litigation, Progress](#)

By Paige Smith

The Equal Employment Opportunity Commission won't be firing on all cylinders if the government decides to partially halt. In fact, it would have to function with less than 5 percent of its usual workforce.

[AFL-CIO Group Charts Future of Work](#)

By Andrew Wallender

The AFL-CIO's Commission on the Future of Work and Unions is turning its attention to issues affecting the federation and labor unions as it wraps up its yearlong study, an AFL-CIO official told Bloomberg Law.

[2019 Outlook: Labor Rules Face Roadblocks by Dems, Lawsuits](#)

By Jaclyn Diaz

The Labor Department under Secretary Alex Acosta's leadership heads into 2019 staring down the barrel of promised House oversight hearings and litigation.

DISCRIMINATION

[LGBT Bias Ordinance Violates Churches' Religious Freedom](#)

By Jon Steingart

An LGBT discrimination ordinance by the city of De Pere, Wis., doesn't apply to churches because it infringes on their religious freedom under the Wisconsin constitution, a state court held Dec. 14.

[Citigroup, Iraqi Muslim Worker Battle Over FBI Background Check](#)

By Patrick Dorrian

An Iraqi Muslim job applicant who says Citigroup refused to hire her for a data entry job because of her national origin and religion can't yet review the unredacted version of an FBI background check the bank received on her, a federal judge ruled.

[Catholic School Teacher's Job Bias Claim Revived](#)

By Patrick Dorrian

A Catholic elementary school in Los Angeles must face a worker's allegations that she was fired because she had breast cancer and needed time off for treatment, a divided federal appeals court ruled.

WAGE & HOUR

[Papa John's No-Poach Rules Draw Antitrust Lawsuit](#)

By Jon Steingart

Papa John's suppresses pay and limits employment opportunities by barring franchisees from recruiting each other's employees, according to a new antitrust lawsuit.

[WPX Energy Faces Overtime Wage Lawsuit](#)

By Brian Flood

Oil and gas producer WPX Energy Services Co. failed to pay its employees overtime, according to a lawsuit filed at the U.S. District Court for the Southern District of Texas Dec. 14.

[Next Step in Houston Firefighter Pay Battle Delayed](#)

By Karn Dhingra

Implementation of a voter-approved ballot initiative that gives Houston firefighters pay parity with the city's police officers was put on hold for at least a few more days.

[FedEx Drivers in California Sue for Overtime Pay, Benefits](#)

By Bernie Pazanowski

Shipping giant FedEx Corp. is facing a class action by long-haul and local drivers challenging the company's position they're employed by independent service providers.

HARASSMENT & RETALIATION

[USPS Can't Cancel Police Officer's Retaliation Win: 1st Cir.](#)

By Patrick Dorrian

The U.S. Postal Service retaliated against a postal police officer in Boston by firing her for complaining about alleged race discrimination, a federal appeals court ruled.

[Texas Univ. Not in Trouble for Firing Professor, Jury Says](#)

By Porter Wells

The University of North Texas didn't break the law when it fired philosophy professor Dale Wilkerson, a jury has ruled.

[Archer Daniels Worker Must Turn Over Phone With Noose Video](#)

By Patrick Dorrian

An Archer Daniels Midland Co. employee suing for alleged racial harassment must turn over his cell phone to a neutral examiner for a full forensic review, a federal judge ruled.

LABOR RELATIONS

[Kaiser, Mental Health Workers Back to Negotiations Post-Strike](#)

By Joyce E. Cutler

Kaiser Permanente executives and the union representing 4,000 mental health workers are scheduled to meet Dec. 21 to discuss contract and staffing issues that led to a recent five-day strike.

IMMIGRATION

[Tech Company Fails in Lawsuit Over Guestworker Visa Denials](#)

By Laura D. Francis

An information technology services company lost its bid to overturn denials of skilled guestworker visas for two of its employees.

[Ending Haitians' Immigration Protections Plausibly Racist: Judge](#)

By Laura D. Francis

A lawsuit challenging the Trump administration's decision to end immigration protections for Haitians as racist is moving forward.

HEALTH CARE & BENEFITS

[GE Still Facing Suit Over Affiliated 401\(k\) Funds](#)

By Jacklyn Wille

General Electric Co. can't escape a lawsuit by employees who say they lost hundreds of millions of dollars in retirement savings because the company filled its \$28.5 billion 401(k) plan with high-cost affiliated funds.

[U.S. Bancorp Sued Over Pension Formula for Early Retirees](#)

By Carmen Castro-Pagan

U.S. Bancorp is accused in a new lawsuit of shortchanging its workers by using a pension formula that allegedly reduces the benefits of early retirees.

[Pollo Tropical Gets Employment Spat Sent to Arbitration](#)

By Jacklyn Wille

Miami-based restaurant chain Pollo Tropical can force a former manager's employment lawsuit into arbitration based on a mandatory arbitration policy announced in a 2006 employee memorandum.

[Vanderbilt, Workers to Mediate Retirement Plan Class Action](#)

By Jacklyn Wille

Vanderbilt University and more than 40,000 current and former employees plan to submit their dispute over the school's retirement plan to a professional mediator.

SAFETY & HEALTH

[Nebraska Dairy Fined \\$79K Over Fatal Grain-Bin Accident](#)

By Christopher Brown

A Nebraska dairy is facing \$79,000 in fines from federal safety regulators following a fatal grain-bin accident.

ALSO IN THE NEWS

[Feds on Leave During Shutdown Could See Smaller Paychecks](#)

By Louis C. LaBrecque

Some federal employees who are on leave after Dec. 21, whether for vacation or just because they have a bad cold, could get a nasty shock when they look at their next paycheck.

[Uber Aims to Shed Troubled Past in Pre-IPO Peace-Making Bonanza](#)

By Peter Blumberg and Robert Burnson

Uber Technologies Inc.'s quiet resolution of allegations that it put thousands of women at risk of sexual assault by their drivers is just the latest move by the ride-hailing giant to lessen its legal exposure as it speeds toward an initial public offering.

[Punching In: Focus Group Guy and a Crystal Ball](#)

By Chris Opfer and Jaclyn Diaz

Monday morning musings for workplace watchers.

['Ghosting' and Social Stalking: Modern Signs of a Hot Job Market](#)

By Jeanna Smialek

Staffing firm Robert Half was recently asked to fill a financial analyst job for a reason that would've been unimaginable back in 2008. Its Los Angeles-based client had already made a hire, but the would-be employee failed to turn up on day one.

[Forget Drones. Amazon's Jeff Bezos Needs Lots of Delivery Guys](#)

By Spencer Soper and Thomas Black

Jeff Bezos captured the world's imagination when he appeared on CBS's "60 Minutes" and pledged to fill the skies with package delivery drones.

[Trump Picks More 'Not Qualified' Judges Than Predecessors](#)

By Patrick L. Gregory

More of Donald Trump's judicial picks have received "not qualified" ratings from the American Bar Association than did those nominated by his four most-recent predecessors in the first two years of their presidencies, Bloomberg Law research shows.

LATEST CASES

[Case: Labor Relations/Discrimination \(Cal. Ct. App., 5th Dist.\)](#)

The California Public Employee Relations Board properly invalidated a court's rule that affected members of a service employees union employed by the court, which prohibited the distribution of literature during work hours, although the board allowed a provision that prohibited employees from wearing pins, lanyards, and other accessories. The court said that courts acting as employers have a strong interest in ensuring that employees appear impartial, but that the rule about literature was ambiguous about "working areas" and would tend to limit protected activities. PERB had the authority to make this determination, because invalidating a rule under a law that allows trial court employees to challenge a rule wouldn't materially impair a constitutional function of the court. The case is Superior Court of Fresno Cty. v. Pub. Emp't Relations Bd., 2018 BL 464738, Cal. Ct. App., 5th Dist., No. F075363, 12/14/18.

[Case: Disability Discrimination/Reasonable Accommodation \(M.D. Ga.\)](#)

A card services support specialist for Synovus Bank in Georgia wasn't entitled to work from home to accommodate his autoimmune disorder, which required bed rest during flare ups, because his job required him to access confidential customer information, and the bank said that accessing those files remotely would jeopardize security. The case is Ford v. Synovus Bank, 2018 BL 462472, M.D. Ga., No. 4:18-CV-8 (CDL), 12/13/18.

[Case: Discrimination/Layoff \(S.D. N.Y.\)](#)

An employee may not proceed with her claim that a financial corporation in New York fired her because of her age. The employee was laid off during a reduction-in-force and she didn't show that her age was a factor in the layoff decision, the court said. The case is *Jacobson v. Capital One Fin. Corp.*, 2018 BL 465096, S.D.N.Y., No. 16-cv-06169 (CM), 12/12/18.

[Case: Individual Employment Rights/Contracts \(D.N.M.\)](#)

A part-time math instructor may have a claim that Central New Mexico Community College breached an implied contract when it didn't hire him for any of the four full-time positions he applied for, a court said. Central New Mexico says that the instructor was never promised a full-time position, but it hasn't shown that he can't provide evidence to support his claim and it may have violated an employee policy related to job vacancies and promotions. The case is *Gonzalez-Aller v. Governing Bd.*, 2018 BL 465324, D.N.M., Civ. No. 17-639 KK/SCY, 12/14/18.

[Case: Individual Employment Rights/Public Policy \(Cal. Ct. App., 4th Dist.\)](#)

A patient care manager for Aspire Home Health Care in San Diego, California can't proceed with her claim that she was fired in retaliation for complaining about her work-shift schedule and a patient's living conditions, and for refusing to see a patient living in a bad neighborhood. The manager didn't properly report her concerns about employee workplace safety and health, the court said. The case is *Bielska v. Aspire Home Health Care, Inc.*, 2018 BL 464493, Cal. Ct. App., 4th Dist., No. D072377, unpublished 12/14/18.

[Case: Wage & Hour/Class Actions \(Cal. Ct. App., 2d Dist.\)](#)

Property inspectors for Allstate and Farmers Insurance, who say they were misclassified as independent contractors exempt from wage requirements, may not use an expert's survey to show that they have similar enough claims to support a class action, because the survey didn't provide enough information to determine how many hours an inspector worked for one of the companies in a given week, among other things. The case is *McCleery v. Allstate Ins. Co.*, 2018 BL 464714, Cal. Ct. App., 2d Dist., No. B282851,

12/14/18.

[Case: Individual Employment Rights/Due Process \(D. Kan.\)](#)

A certified nurse aide for long-term care facility Avita doesn't have a claim for violation of his due process rights when he was fired after a patient falsely accused him of abuse. The CNA says that Avita's actions after the accusation "effectively revoked" his professional certification, but he can't show that it shared the information with his potential employers or that details of his firing were made public. The case is Odhuno v. Reed's Cove Health & Rehab., LLC, 2018 BL 463864, D. Kan., No. 15-1347-EFM-GEB, 12/14/18.

[Case: Disability Discrimination/Waiver \(E.D. Mich.\)](#)

The University of Michigan won't have to defend against a former research lab specialist's claim, saying that its decision not to rehire her four years after firing her was discrimination based on her depression and anxiety, because she signed a settlement agreement in a previous discrimination case against the University which stipulated that she was ineligible for rehire and that she released the University of any further claims against it. She admitted she wasn't forced to sign the agreement, and no evidence supported her argument that her stress levels and depression affected her mental capacity to enter into it. The case is Yusong Gong v. Univ. of Mich., 2018 BL 464733, E.D. Mich., No. 16-14516, 12/14/18.

[Case: Disability Discrimination/Expert Testimony \(S.D. Miss.\)](#)

The Equal Employment Opportunity Commission can't have its expert witness testify on issues not previously disclosed to Wesley Health Systems in its disability discrimination case against the hospital. It would unfairly prejudice the hospital to allow him to testify on matters that it had not discussed in his deposition, and it's too late to reopen discovery, the court said. The case is EEOC v. Wesley Health Sys., LLC, 2018 BL 460294, S.D. Miss., No. 2:17-CV-126-KS-MTP, 12/12/18.

[Case: Individual Employment Rights/Defamation \(Cal. Ct. App., 4th Dist.\)](#)

The city of Adelanto, California can't dismiss—under state anti-SLAPP statute

—a former employee's claim that the mayor spread false rumors that she had sexual relationships with city vendors in an attempt to have her fired, a court said. The city can't show that the mayor's statements were made during a legislative proceeding or that they involved a matter of public interest, so they weren't protected under the statute. The case is *Cordero v. City of Adelanto*, 2018 BL 462551, Cal. Ct. App., 4th Dist., E068322, unpublished 12/13/18.

[Case: Disability Discrimination/'Qualified Individual' \(D. Utah\)](#)

Albertson's grocery store in Colorado prevails over a warehouse worker's disability discrimination claim based on the store's refusal to let him to return to work after he took extended medical leave for injuries from a car accident, because he hasn't been able to pass the physical ability test that is required of all warehouse workers. Moreover, he hasn't suffered any actual adverse action because he remains an employee and is free to retake the physical ability test at any time, the court said. The case is *Flores v. Albertsons, LLC*, 2018 BL 462954, D. Utah, 2:17-CV-1321-DN, 12/13/18.

[Case: Disability Discrimination/Demotion \(M.D. Pa.\)](#)

A former department director at Scranton Counseling Center in Pennsylvania loses his claim that he was demoted because of his arthritic hip and resulting hip surgery, because there was ample evidence of his poor performance to support the Center's given reason for the demotion, his arguments that the Center incorrectly evaluated him does not call that reasoning into question, and there's no evidence the Center was even aware of his hip issues at the time. The case is *Holyk v. Scranton Counseling Ctr.*, 2018 BL 462459, M.D. Pa., No. 3:17-0435, 12/13/18.

[Case: Labor Relations/Waiver \(Cal. Ct. App., 1st Dist.\)](#)

An employee of Flying Food Group LLC won't be compelled to arbitrate her sexual harassment and hostile work environment claims under California's Fair Employment and Housing Act. A labor contract between her employer and a union contains an arbitration provision, but doesn't include a clear and unmistakable waiver of a judicial forum for an employee's statutory claims. The contract also contains a nondiscrimination provision, but a general reference to nondiscrimination laws isn't an explicit incorporation of FEHA, a court said, in

affirming the denial of her employer's motion to compel arbitration of her claims. The case is *Gutierrez v. Flying Food Grp. LLC*, 2018 BL 462478, Cal. Ct. App., 1st Dist., A146852, 12/13/18.

[Case: Disability Discrimination/'Substantially Limits' \(D. Colo.\)](#)

A nurse who was fired from Children's Hospital Colorado may show at trial that her shoulder injury, which limited her ability to lift and reach for a period of three months, was 'substantially limiting' and thus a qualifying 'disability' for purposes of her disability discrimination claim. The court said that a jury must decide whether or not an impairment that lasts three months is substantially limiting, especially in light of the forgiving standards of the Americans with Disabilities Amendments Act. The case is *Austin v. Children's Hosp. Colo.*, 2018 BL 461925, D. Colo., No. 17-cv-02491-KLM, 12/13/18.

[Case: Discrimination/Race Discrimination \(M.D. Ga.\)](#)

A black employee for the Housing Authority of Columbus in Georgia can't proceed on her claims alleging that she was subjected to race discrimination and retaliation, because the court has already given her an opportunity to amend her complaint to provide the additional factual support necessary to maintain those claims, and her failure to do so warrants dismissal. The case is *Plummer v. Hous. Auth. of Columbus*, 2018 BL 463585, M.D. Ga., No. 4:18-CV-32 (CDL), 12/11/18.

[Case: Discrimination/Appointment of Counsel \(D. Kan.\)](#)

A Kansas federal court won't appoint an attorney to represent a Pentair employee bringing federal civil rights claims, because, among other reasons, he has met with only two attorneys, and the fact that he didn't attach his right-to-sue letter from the EEOC might indicate that his claims could fail on procedural grounds. The case is *Palmer v. Pentair*, 2018 BL 462533, D. Kan., 18-cv-2638-CM-TJJ, 12/13/18.

[Case: Individual Employment Rights/First Amendment \(D. Conn.\)](#)

A highway supervisor for the town of Stonington, Connecticut can't proceed with his First Amendment claim that he was fired in retaliation for expressing concerns about the town's snow and ice removal policies, and for reporting an

employee's unethical use of a town car in two emails to a town official. The supervisor's speech only involved work-related grievances against the town director of public works, and it related to his official job duties. The case is *Dicesare v. Town of Stonington*, 2018 BL 462002, D. Conn., No. 3:15-cv-01703 (VAB), 12/13/18.

[Case: Wage & Hour/Hours Worked \(Alaska\)](#)

An airplane pilot for an Alaska wilderness lodge may not recover overtime pay for time he spent on premises but not performing work, because his employment contract, which provided that he would work 32 hours of overtime per six-day workweek, doesn't necessarily establish that he actually worked all 32 hours, and, among other things, he wasn't generally expected to stay in one location, prepared to fly, when he was on call. The case is *Moody v. Lodge*, 2018 BL 463900, Alaska, S-16713/16733, No. 7322, 12/14/18.

[Case: Discrimination/Unequal Pay \(4th Cir.\)](#)

A black subcontractor didn't show that he was paid less than white subcontractors for hauling trucks, a court said. The company presented evidence that payment was based on the weight of the vehicle towed, and the truck he hauled didn't qualify as a heavier "medium tow." The case is *Turner v. Copart, Inc.*, 2018 BL 462213, 4th Cir., 18-1701, 12/12/18).

[Case: Individual Employment Rights/False Claims Act \(S.D. Tex.\)](#)

The general counsel for Houston Housing Authority may proceed with her whistle-blower claim that she was fired in retaliation for reporting that managers were negligently supervising employees, and that some employees were illegally selling public housing vouchers for personal gain, a district court said in declining to adopt part of a magistrate's recommendation. The general counsel may show that her supervisor knew about her reports, and that the reports—not an alleged false accusation of fraud or misconduct—motivated her firing, the court said. The case is *Minix v. Hous. Hous. Auth.*, 2018 BL 462479, S.D. Tex., No. 4:17-00624, 12/13/18.

[Case: Discrimination/Punitive Damages \(D. Neb.\)](#)

An employee alleging age discrimination and retaliation won't be able to

request punitive damages against Terry Hughes Tree Services, because none of the laws under which she brought her claims—the Age Discrimination in Employment Act, the Nebraska Age Discrimination in Employment Act, and the Nebraska Fair Employment Practices Act—allow for punitive damages. The case is *Harmel v. Terry Hughes Tree Serv., Inc.*, 2018 BL 462942, D. Neb., 8:18CV401, 12/13/18.

[Case: Discrimination/Appointment of Counsel \(D. Kan.\)](#)

A Kansas federal court won't appoint an attorney to represent a JC Penney Distribution Center employee asserting employment discrimination claims, because, among other reasons, she has only met with four attorneys thus far, and at this point, it's unclear whether she has a strong case, particularly given that she didn't attach her right-to-sue letter from the EEOC, which might indicate that her case could suffer from procedural defects. The case is *Beecham v. JC Penney Distribution Ctr.*, 2018 BL 462494, D. Kan., 18-cv-2648-DDC-TJJ, 12/13/18.

[Case: Discrimination/Retaliation \(5th Cir.\)](#)

A former employee at a Texas medical practice couldn't convince a federal appeals court to grant her a new trial on her claim that she was fired in retaliation for refusing to fire another long-time employee of the company, even though she believed that doing so would amount to age discrimination. There was ample evidence to support the jury verdict in favor of the company, including the facts that the company believed the fired employee "refus[ed] to do her job" and that there had been increased tension in the workplace between the fired employee and her supervisor. The case is *Garza v. Caplin*, 2018 BL 462732, 5th Cir., 18-40130, unpublished 12/13/18.



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From: [GovExec Today](#)
To: [Ring, John](#)
Subject: Agencies begin shutdown preparations; a renewed priority on workforce cuts; lingering State Dept. vacancies
Date: Tuesday, December 18, 2018 5:33:04 AM

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GovExec Today

December 18, 2018



[With Four Days Until Deadline, Agencies Begin Shutdown Preparations](#) // Erich Wagner

The Office of Management and Budget led a required call with agency officials last week.

[Trump Administration Revives Priority for Workforce Cuts](#) // Eric Katz

New memo appears to reverse a reversal on slashing federal jobs.

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[CIA CIO Sees Data as the 'Tip of the Spear' in Intelligence](#)

The intelligence agency must optimize its tech and workforce to speed up data collection and analysis, according to John Edwards.

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[State Department Under Pompeo Still Coping with Vacancies](#) // Charles S. Clark

Just more than half of top jobs are filled as Trump's third year approaches.

[Quiz: What Happens to Your Pay and Benefits During a Shutdown?](#) // GovExec Staff

Test your knowledge of what will happen if Congress lets appropriations run out for some agencies on Dec. 21.

[The Best Leaders Make Fewer Decisions, Not More](#) // Gregg Johnson

Here is how they spend their time instead.

[Managing Millennials? First, Set Aside Your Assumptions](#) // Cy Wakeman

Many people buy in to the myth that the millennial generation is entitled, demanding, and unprepared to deliver on real workforce challenges.

[Agency Policing Tent City for Immigrant Kids Lacks Experience Investigating Sex Crimes Involving Children](#) // Topher Sanders and Michael Grabell

The Federal Protective Service, which primarily secures federal buildings, has been charged with responding to incidents at the shelter with 2,800 immigrant children in Tornillo, Texas.

[17 Rules of Presidential Behavior From George Washington](#) // John Walcott

As a young man, the first president sought to follow a list of 110 precepts compiled by Jesuits in the 16th century.

[See Who Would Get Furloughed in a Christmas Shutdown](#) // Eric Katz

Nearly 350,000 feds could be sent home without pay come Dec. 21.

[Report: Tech Shops Don't See Themselves Driving Change](#) // Jack Corrigan

Nearly 60 percent of civilian tech specialists cited insufficient funding as a major barrier to IT modernization.

[Jails May Not Be Able to Hold Juveniles Pretrial Much Longer](#) // Dave Nyczepir

Local governments would have three years to find space for youths elsewhere, space a recent UCLA Law School report argues already exists.

[Transportation Is Consolidating Its IT Contracts into a Single Vehicle](#) // Aaron Boyd

The Enterprise IT Shared Services contract will be available departmentwide but task orders will have to flow through the Office of the Chief Information Officer.

[Crowdsourcing King Tides to Better Understand Rising Sea Levels](#) // Michael Grass

In Washington state and Virginia, the public can help planners and researchers monitor the inundation of low-lying coastal areas.

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[CIA CIO Sees Data as the 'Tip of the Spear' in Intelligence](#)

The intelligence agency must optimize its tech and workforce to speed up data collection and analysis, according to John Edwards.

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From: [Morning Shift](#)
To: [Ring, John](#)
Subject: POLITICO's Morning Shift: Two can play that game — HELP GOP leader out in 2020 — Shutdown suspense
Date: Tuesday, December 18, 2018 10:03:35 AM

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2018 Newsletter Logo: Morning Shift



12/18/2018 10:00 AM EDT

By REBECCA RAINEY (rrainey@politico.com; [@RebeccaARainey](#))

With help from Ian Kullgren

PROGRAMMING NOTE: [Morning Shift](#) will not publish from Dec. 24-Jan 1. Our next Morning Shift newsletter will publish on Jan. 2. Please continue to follow Pro Employment & Immigration issues [here](#).

Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click [here](#).

QUICK FIX

Democrats are pledged to block the GOP's labor nominees if Republican senators won't confirm nominees for Democratic seats on the NLRB and the EEOC.

— **Lots of buzz** about Senator Lamar Alexander's announcement that he won't seek re-election in 2020. But that won't affect leadership of the Senate HELP panel, because Alexander's chairmanship was already term-limited to end in 2021.

— **GOP lawmakers are plotting to avoid** a partial government shutdown Friday, but with three working days left they're still waiting on a plan from President Donald Trump.

— **National-security officials gave T-Mobile** the green light Monday to merge with Sprint, prompting labor economists to fret that less competition will mean lower wages.

GOOD MORNING! It's Tuesday Dec. 18, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to rrainey@politico.com, thesson@politico.com, ikullgren@politico.com, and tnoah@politico.com. Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren), and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

ON THE HILL

TWO CAN PLAY THAT GAME: In one corner, Sen. [Mike Lee](#) (R.-Utah) is barring Chai Feldblum, an EEOC commissioner whom the Trump administration nominated to keep her Democratic chair for another term from getting confirmed through unanimous consent. Lee's objection [is that](#) Feldblum (who is gay) believes that "rights for LGBT Americans are secured only by curtailing the rights of religious Americans." Feldblum, for her part, has [complained](#) that "various groups have mischaracterized my views in an effort to paint me as a radical opponent of religious liberty." If Feldblum isn't confirmed, the EEOC will lack a quorum in January.

In the other corner, Sen. [Patty Murray](#) (D-Wash.) has pledged to block unanimous consent votes on all other GOP labor nominees unless Feldblum and Mark Pearce, re-nominated for his Democratic seat on the NLRB, are confirmed by unanimous consent. To get all these blocked nominees to the floor by Friday, Democrats and Republicans will have to cut a deal or file for cloture by mid-day Wednesday. More on the situation from Vox [here](#).

ENZI IN 2021?: Sen. [Lamar Alexander](#) (R-Tenn.) announced Monday that he won't seek reelection after the next Congress. This isn't as momentous as it sounds for the Senate HELP Committee, which Alexander chairs, because he was already due to give up the gavel in 2021 when he reached his six-year term limit. Next in line by rank is Sen. [Mike Enzi](#) (R-Wyo.), but it's way too early to tell if he'll be the next chairman. More on Alexander's exit from POLITICO's Burgess Everett [here](#).

TRUMP SAVORS SUSPENSE: Senate Appropriations Chairman [Richard Shelby](#) (R-Ala.) met privately with Senate Majority Leader [Mitch McConnell](#) on Monday afternoon to talk about avoiding a government shutdown, POLITICO's Burgess Everett, John Bresnahan and Sarah Ferris report. The Republicans have a plan, but Trump isn't saying whether he supports it because he wants to "maximize drama," according to a Republican who's close to the White House. "A former White House official who spoke with Trump Friday said the president is relishing the fact that Republicans are awaiting his signal and letting him set the terms," Everett, Bresnahan, and Ferris report. More from POLITICO [here](#).

SPRINT-T-MOBILE MERGER: National-security officials okayed T-Mobile's merger with Sprint Monday, The Wall Street Journal reports. While the deal still needs approval from antitrust authorities, "executives have said they expect that process to end in the first half of next year," according to the Journal. If the merger is approved, the U.S. wireless market will be reduced to three major players, including AT&T and Verizon, leaving retail wireless workers fewer opportunities for employment. Researchers at the Economic Policy Institute and the Roosevelt institute, two left-leaning think tanks, estimate that their average weekly earnings would decline 1-3 percent in most affected labor markets, and as much as 7 percent in the hardest hit markets. More from the Journal [here](#); read the paper [here](#).

AT THE BORDER

CBP CONTRADICTS COMMENTS ON METERING: Did CBP Acting Assistant

Commissioner Jud Murdock contradict official claims that border agents haven't been slow-walking asylum processing deliberately to create a deterrent? Buzzfeed reports on a letter signed by Democratic Reps. [Zoe Lofgren \(D-Calif.\)](#), [Bennie Thompson \(D-Miss.\)](#), and [Jerry Nadler](#) (D- N.Y.) that says, in a closed congressional hearing earlier this month, Murdock "clearly indicated, given the context, that the department's decision to limit processing was primarily motivated by its desire to deter migrants from seeking asylum at ports of entry." More [here](#).

NO MOOLAH FOR MOONVES: Former CBS Chief Executive Leslie Moonves won't get his \$120 million golden parachute after the company says he misled CBS about "multiple allegations of sexual misconduct and tried to hide evidence," the New York Times reported Monday. Moonves stepped down as chief executive of the storied Tiffany Network after the New Yorker's Ronan Farrow detailed [two rounds](#) of sexual harassment allegations against Moonves, including "claims that Moonves forced [women] to perform oral sex," that he "exposed himself," and that he "used physical violence and intimidation." The Times [obtained a report](#) from lawyers hired by CBS earlier this month that said Moonves "destroyed evidence and misled investigators in an attempt to preserve his reputation and save a lucrative severance deal." More from the Times [here](#).

CONTRACTORS DYING FROM ELECTROCUTION: Of all the contract workers who died as a result of electrocution in recent years, a "significant share" were construction workers, Construction Dive's Kim Slowey reports. The National Fire Protection Association analyzed Bureau of Labor Statistics data from 2012 through 2016 and found that 8 percent of all contract worker deaths were from electrocution, and 68 percent of those workers were in the construction and extraction fields. More from Construction Dive [here](#).

MORE DROPPED FROM MEDICAID: Some 4,655 Medicaid enrollees in Arkansas were booted from the program this month for failing to meet the state's work requirement, POLITICO's Dan Golberg reports. More than 16,000 low-income adults have now been removed in total from the program during the past four months in Arkansas, the only state where Trump-approved work rules have taken effect, he writes. More for Pro's [here](#).

LIFE AFTER JANUS

MORE UNION REFUND DISPUTES: A San Francisco appeals court will hear arguments this morning in a class action lawsuit seeking refunds from union dues

collected from an estimated 40,000 California state workers by SEIU Local 1000. The National Right to Work Legal Foundation, which is representing the workers in *Hamidi v. SEIU*, says the potential cost of the refunds could top \$100 million.

A lower court found in February 2017 that the union's procedure for collecting fees from non-members did not violate their constitutional rights, but the National Right to Work Foundation, which is representing the California workers, appealed the following month. With the Supreme Court's June ruling in *Janus v. AFSCME*, the foundation says that its [case seeking to collect fees](#) all the way back to 2012 has been strengthened. The union says in its [brief](#) that it stopped collecting so called "fair-share" fees once the ruling in *Janus* was issued, and that it had relied on "good faith" concerning existing state law. A Washington federal district judge [dismissed](#) a similar case last month filed by a separate conservative group, but the foundation has successfully collected refunds for public employees in [Minnesota](#) and [Oregon](#).

IMMIGRATION IMPACTS FOOD SAFETY: Remember that E. coli outbreak before Thanksgiving that prompted officials to warn American consumers to avoid all romaine lettuce? Crop scientist Sarah Taber writes in Slate that the Trump's administration's hard-line immigration policies may be partially to blame. As ICE worksite enforcement investigations, audits, and arrests "surged" over the last fiscal year by [300 to 750 percent](#), the fear of being noticed may have kept front-line migrant workers from flagging food safety concerns, Taber writes.

"To do even the most basic food safety practices, you need workers who can get trained, stay, and put that training to work," Taber writes. "Any situation that disrupts the farm workplace, increases turnover, or incentivizes workers to keep quiet and not get noticed has consequences for food safety." More from Slate [here](#).

COFFEE BREAK

— "Politicians have caused a pay 'collapse' for the bottom 90 percent of workers, researchers say," from [The Washington Post](#)

— "NYC Uber rides are getting more expensive," from [Bloomberg](#)

— "How restaurants are using benefits to win in a tight labor market," from [Restaurant Dive](#)

— Opinion: "How the Trump Administration Is Messing with the Census," from [The New York Times](#)

— "Green New Deal push poses balancing act for greens, labor," from [POLITICO](#)

— "Trump's former maid asks for asylum to stay in U.S. after admitting she's undocumented," from [NJ.com](#)

— "Uber Can't Bar Workers From Discussing Lawsuits: NLRB Lawyer," from [Bloomberg Law](#)

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GovExec Breaking News

December 18, 2018



[White House Punts on Shutdown Specifics, Puts Onus on Senate](#) // Erich Wagner

For a while Tuesday morning, it appeared that Congress and the White House could quickly reach an agreement to avert a partial government shutdown ahead of Friday's funding deadline.

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GovExec Today

December 19, 2018



[Trump Gives Federal Employees Christmas Eve Off](#) // GovExec Staff

Move comes as partial shutdown prospect still looms.

[Civilians Are Cheaper Than Contractors for Most Defense Jobs, Internal Report Finds](#) //

Eric Katz

Contractors are particularly more expensive in the capital and Southeastern regions, according to a report obtained exclusively by Government Executive.

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New Accenture research finds that 58 percent of agency operations require significant or complete manual processing. Learn how intelligent automaton can deliver needed cost-savings, faster processing, and greater control by combining robotic process automation and artificial intelligence. [Putting Intelligent Automation to Work for Federal](#) reveals eight key benefits and six common misconceptions. Learn how to apply intelligent automation and who's "getting it right."

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[White House Punts on Shutdown Specifics, Puts Onus on Senate](#) // Erich Wagner

Press secretary had suggested Trump would back down from his demand for \$5 billion in border wall funding, but Democrats rejected the latest offer from Republicans.

[Is the Federal Workforce Reaching Its Breaking Point?](#) // Howard Risher

The level of burnout across government may be approaching a crisis point. The cost is substantial and growing worse.

[Agriculture Readies Second Round of Tariff-Related Farm Aid](#) // Charles S. Clark

Trump joins farm groups in welcoming money, with only a fraction delivered.

[Trump's Space Force Request Is Coming — But Final Form Remains Hazy](#) // Marcus Weisgerber

Will his proposed space organization more resemble the Air Force or the Marines? Pence didn't say.

[A Shutdown Would Have More Negative Effects than You Might Think](#) // William G. Resh and Susannah Bruns Ali

The budget impasse threatens our future capacity to govern.

[Ex-Russian Spies Say The U.S. Is Losing Because It Can't Control Social Media](#) // Justin Rohrllich

Ex-Russian Spies Say The U.S. Is Losing Because It Can't Control Social Media

[Agencies Faced More Than 35,000 Cyber Incidents in 2017, Watchdog Says](#) // Jack Corrigan

But they're procrastinating on adopting security tools and strategies.

[Crime and Murder Rates Drop in Most Big Cities](#) // Laura Maggi

While the trend isn't universal, Brennan Center for Justice research findings "definitively reject any claims" of the nation being in a "crime wave."

[If Feds Go Home For a Shutdown, Do Their Phones Go With Them?](#) // Aaron Boyd

A handful of potentially impacted agencies have updated their guidance since the last shutdown.

[U.S. Homelessness Edged Upwards This Year, Federal Report Says](#) // Bill Lucia

At least one advocacy group points to housing affordability as a key factor. Also on Monday, Housing and Urban Development Secretary Ben Carson announced a high-level staff departure.

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TOP STORIES

[Justice Department in Legal Pretzel Over LGBT Rights](#)

By Chris Opfer

The Justice Department is in an awkward spot: It once again is defending a move to protect LGBT rights, despite disagreeing with it.

[Joint Employer Proposal Falls Short, NLRB General Counsel Says](#)

By Robert LaFolla and Hassan A. Kanu

The National Labor Relations Board's top lawyer unexpectedly criticized the agency's proposal for determining when multiple companies should share joint liability for labor law violations.

[Trump Apprenticeship Program: Some Answers, Many Questions](#)

By Jaclyn Diaz

Labor Department information about its new nationwide apprenticeship program has unions and trade groups apprehensive.

[2019 Outlook: Busy NLRB Looks to Pivot From Controversies](#)

By Hassan A. Kanu and Robert Iafolla

The NLRB will be working to issue two major workplace rules and resolve a huge case against McDonald's in 2019, all while its chair and general counsel move carefully to avoid reigniting ethical controversies from 2017.

DISCRIMINATION

[AT&T Worker Sees Missouri Law Race Bias Claims Revived](#)

By Patrick Dorrian

AT&T Mobility Services LLC must face an AT&T employee's claims that managers harassed and discriminated against her because she is white.

[Pinnacle Foods Beats HR Supervisor's Discrimination Suit](#)

By Peter Hayes

Pinnacle Foods Group LLC shook off wrongful termination claims filed by a human resources supervisor at a Michigan pickle packaging plant.

[Cargill Worker Fired for Absenteeism, Not Disability](#)

By Porter Wells

Cargill Meat Solutions Corp. didn't discriminate against a disabled woman when it fired her after she missed nine months of work without authorization, the U.S. Court of Appeals for the Eighth Circuit said Dec. 19.

[Kaiser, Permanente Can't Slip Workers' Class Race Bias Suit](#)

By Patrick Dorrian

Kaiser Foundation Health Plan Inc. and related entities must continue to face allegations that they systemically denied promotions and equal treatment to black employees in northern California based on race, a federal judge ruled.

WAGE & HOUR

[Cardinal Innovations Healthcare to Pay \\$749K OT Settlement](#)

By Jon Steingart

Cardinal Innovations Healthcare Solutions will pay \$748,527.08 to settle a lawsuit in which health care workers say they were underpaid.

[Amazon Hit With Driver's Wage and Hour Class Suit](#)

By Brian Flood

Amazon is skirting federal wage and hour laws by contracting out to third-party delivery service providers, a delivery driver claimed in a new lawsuit.

HARASSMENT & RETALIATION

[Senate Democrats: Let's Stop Workplace Harassment](#)

By Tyrone Richardson

The federal government should do more to help thwart workplace harassment, including tasking the Equal Employment Opportunity Commission with educating workers about their rights.

[HBO Parking Assistants Lose Most Claims in Retaliation Suit](#)

By Porter Wells

Home Box Office Inc. persuaded a federal court in New York to dismiss claims by 41 parking production assistance that the company retaliated against them for participating in a lawsuit.

[Walmart to Stand Trial on Challenge to Permanent Job Coach](#)

By Patrick Dorrian

Walmart must face a jury trial over whether the retailer violated the job rights of a deaf cart pusher in Wisconsin when it questioned his use of a permanent job coach 17 years into his employment, a federal judge ruled.

STATE & LOCAL LAWS

[Kentucky Legislators Seek Pension Overhaul Re-Do](#)

By Alex Ebert

Kentucky legislators are reviving proposals to overhaul state workers' defined-benefit plans in a special session geared toward speedy passage of bills to shore up the state's credit ratings.

[Houston Firefighters Get Pay Raise; Mayor Predicts Layoffs](#)

By Karn Dhingra

Houston's firefighters are on the path to "pay-parity" with the city's police officers.

WHISTLEBLOWERS

[Nuclear Plant Fined \\$232K for Allegedly Silencing Whistleblower](#)

By Michael J. Bologna

The Nuclear Regulatory Commission recommended a fine against the only nuclear plant in Kansas, finding Wolf Creek Nuclear Operating Corp. retaliated against a whistleblower who raised safety concerns during a planned facility shutdown.

LABOR RELATIONS

[Editorial Staffers at The Dodo Ratify First Labor Contract](#)

By Paige Smith

Approximately 45 staff members at animal-focused digital news site The Dodo ratified a three-year contract Dec. 19, according to a union statement.

[Kaiser Faces Labor Relations Complaint Involving 85,000 Workers](#)

By Hassan A. Kanu

Kaiser Permanente will likely have to defend against a complaint from the

federal labor board if it doesn't go back to the bargaining table with a coalition of unions soon.

IMMIGRATION

[Chicago's Sinai Health System Settles Immigrant Bias Claims \(1\)](#)

By Laura D. Francis

Sinai Health System of Chicago will pay \$7,000 to settle claims that it routinely asked lawful permanent residents to produce their green cards when verifying their employment eligibility.

[Oregon Restaurateur Gets Jail Time for Forced Labor Scheme \(1\)](#)

By Laura D. Francis

The former owner of two Portland, Ore.-area Thai restaurants will spend three years in prison and pay more than \$250,000 in restitution and back taxes for a forced labor scheme involving chefs from Thailand.

HEALTH CARE & BENEFITS

[DOL's Association Health Plan Rule Gets Restaurant Group Support](#)

By Jon Steingart

The U.S. Labor Department's rule that lets let small businesses and self-employed individuals form associations to obtain health insurance should be upheld, a restaurant business association told a federal judge.

[Volkswagen Pushes Team Spirit in Management-Bonus Overhaul](#)

By Chris Reiter

Volkswagen AG wants its managers to be more team-oriented and is eliminating individual performance when determining executive bonus payouts.

[GE's \\$15B Insurance Shortfall Spawns Retirement Plan Suit \(1\)](#)

By Jacklyn Wille

General Electric Co.'s \$15 billion insurance funding shortfall spurred a new class suit by an employee who says she lost retirement savings held in GE stock.

[Kentucky Lawmakers Short-Circuit Special Session on Pensions](#)

By Alex Ebert

A Kentucky special session invoked to pass pension overhaul bills disbanded shortly after its first day because legislators said they couldn't tackle the policy debate in five days.

[Retirees Thought GE Would Take Care of Them Forever. It Didn't](#)

By Natasha Rausch

Back in 1971, when he went to work at a General Electric Co. plant in upstate New York, John Phelps probably wasn't naive in believing that the company would take care of him to the grave.

SAFETY & HEALTH

[Energy Dept. Contractor Claims Move Forward Against DOL](#)

By Fatima Hussein

A Department of Energy contractor who claims she developed a chronic inflammatory lung disease due to beryllium exposure while working will see her case against the Labor Department move forward.

[Construction Worker Death at Bel Air Jobsite Under Investigation](#)

By David McAfee

California's Division of Occupational Safety and Health is investigating an incident involving a construction worker who fell to his death at a worksite in Bel Air, an official confirmed Dec. 19.

[Chemical Facility Program Would Continue Under Spending Bill \(1\)](#)

By Sam Pearson

Congress would have more time to consider extending an expiring chemical facilities security program under a continuing resolution introduced Dec. 19.

ALSO IN THE NEWS

[Employer Wellness Plan Incentives to Be Removed From EEOC Rules](#)

By Jay-Anne B. Casuga

Provisions that allow employers to offer health insurance incentives to workers who participate in company-sponsored wellness programs will be nixed from federal rules ahead of a Jan. 1 court-mandated end date.

[Employer Not Liable for Calling Police on Union Activists](#)

By Jon Steingart

A laundry and linen company didn't interfere with its employees' right to engage in collective activity when it called the police to remove union activists leafleting near its facility, the U.S. Court of Appeals for the Third Circuit held.

[New Work Suits: Ford, GM Hit With Bias Claims](#)

By Cynthia Harasty and Cathleen O'Connor Schoultz

Campbell Soup and Kraft Heinz dished out harsh leave terms to their employees, violating the Family and Medical Leave Act, according to two new lawsuits filed in federal courts last week.

[DOL Needs to Enforce Child Labor Laws Better, Lawmakers Say](#)

By Jaclyn Diaz

Two congressional Democrats are calling on a Labor Department official to provide a "comprehensive" strategy to improve enforcement of child labor laws.

[Schlumberger Cuts 188 Texas Sand-Trucking Jobs as Fracking Slows](#)

By David Wethe

Schlumberger Ltd. is cutting nearly 200 jobs at its sand-trucking unit in South Texas as the oil patch grapples with a cut back in frack work.

[2019 Outlook: Trump Judge Picks Could Flip Circuits \(2\)](#)

By Patrick L. Gregory

President Donald Trump's remarkable record of appointing conservative judges is leading to a dramatic shift in the make-up of several federal appeals courts.

[Lyft Puts Its Driver on a Pedestal to Win Share From Uber](#)

By Eric Newcomer

On Dec. 6, Uber Technologies Inc. filed paperwork confidentially with the U.S. Securities and Exchange Commission to go public. According to sources familiar with the filing, Uber's likely investment bankers—Morgan Stanley and Goldman Sachs Group Inc.—believe the company could be valued at \$120 billion.

LATEST CASES

[Case: Discrimination/Waiver \(D. Kan.\)](#)

A group of former employees of Spirit Aerosystems Holdings, Inc. couldn't show that their waivers of claims arising under the Age Discrimination in Employment Act weren't knowing and voluntary under the Older Workers Benefit Protection Act, a court said. The employees argued that Spirit should have disclosed that layoffs and firings under the same reduction plan took place at other facilities and other times in Wichita, but the court said that the employees performed work unique to their facility, and that additional disclosure would have only diluted the data relevant to the decision to lay them off. The case is *Raymond v. Spirit Aerosystems Holdings, Inc.*, 2018 BL 465626, D. Kan., 16-1282-JWB, 12/17/18

[Case: Individual Employment Rights/Due Process \(E.D. Pa.\)](#)

An officer who'd been prescribed Adderall may proceed with his claim that he was deprived of due process when he was suspended, apparently on suspicion of drug abuse, tested for drugs, not given the tests results nor a chance to contest them, and eventually fired by the Philadelphia Housing Authority Police Department. He sufficiently alleged that his notice of suspension didn't mention drug abuse or the results of his drug test and that he wasn't given a hearing before or after his firing, the court said. The case is *Jeannot v. Phila. Hous. Auth.*, 2018 BL 469489, E.D. Pa., 18-1977, 12/19/18.

[Case: Wage & Hour/Rest Periods \(C.D. Cal.\)](#)

A truck driver for Swift Transportation didn't show that the company improperly failed to provide him with rest breaks, because the company's records show that it authorized rest breaks, and that his pay was based on how long it took to complete a trip, including the time for rest breaks. The case is *Mares v. Swift Transp. Co. of Ariz., LLC*, 2018 BL 468476, C.D. Cal., No. 2:15-cv-07920 VAP (KKx), 12/18/18.

[Case: Discrimination/Tolling \(8th Cir.\)](#)

A black truck driver laid off at 56 from Joshen Paper & Packaging of Arkansas couldn't show that a 180-day limitations period should be tolled regarding a discriminatory layoff claim, or that Joshen should be precluded from arguing untimeliness, a court said. He argued that he thought his job would still be available after he recovered from an injury because his supervisor told him he would only be laid off and not fired, but the court said there was no evidence that Joshen took actions to stop him from filing a claim, that being eligible for rehire wasn't the same as being promised his job back, and that a reasonable person wouldn't expect to be rehired, because his supervisor never made that promise and the driver never asked to be rehired. The case is *Kirklin v. Joshen Paper & Packaging of Ark. Co.*, 8th Cir., 17-1935, 12/19/18

[Case: Individual Employment Rights/First Amendment \(MD. Ga.\)](#)

A curriculum director and testing coordinator can't proceed against the Hancock County School District in Georgia with her claim that she was fired

from that job for reporting to an independent, nonprofit school-accrediting organization a school board member's misconduct, including interrupting classroom instruction and yelling at students. Although she might have spoken about a topic that was of importance to her community, she was speaking as a school district employee, the court said, and her speech isn't protected by the First Amendment. The case is *Jones v. Hancock Cty. Sch. Dist.*, 2018 BL 469487, M.D. Ga., 5:17-CV-185 (MTT), 12/19/18.

[Case: Wage & Hour/Employer Coverage \(S.D.N.Y.\)](#)

A delivery person for a Manhattan sushi restaurant didn't show that it made the threshold \$500,00 in annual sales necessary for coverage by federal wage law, because he didn't offer sufficient evidence to challenge the accuracy of the restaurant's tax returns, which show that its gross sales for the past three years were at most \$400,000. The case is *Jun Chen v. Sushi 21 NY Inc.*, 2018 BL 468744, S.D.N.Y., 17CV6153 (JGK), 12/18/18.

[Case: Wage & Hour/Wage Payment \(N.C. Super. Ct.\)](#)

A former attorney for the Tuggle Duggins law firm in North Carolina must give more information to show that he is entitled to post-termination pay, because he didn't explain whether the "services" for which he says he is owed compensation were rendered in his capacity as an employee, director, or shareholder of the firm, and he may only recover pay for work he performed as an employee. The case is *Tumlin v. Tuggle Duggins P.A.*, 2018 BL 467924, N.C. Super. Ct., No. 15 CVS 9887, 12/18/18.

[Case: Discrimination/Remand \(W.D. Mo.\)](#)

A state-law employment discrimination lawsuit by a resident of Missouri against Target Corporation and her individual supervisor will be returned to state court. The federal court can't hear the case due to a lack of diversity among the parties, even though the supervisor intended to move to Oklahoma and has since done so, because he was still a resident of Missouri and not yet physically present in Oklahoma at the time the suit was filed. The case is *Robinson v. Target Corp.*, 2018 BL 468114, W.D. Mo., 3:18-05039-CV-RK, 12/18/18.

[Case: Labor Relations/Waiver \(Cal.Ct.App. 1st Dist.\)](#)

An employee of Flying Food Group LLC won't be compelled to arbitrate her sexual harassment and hostile work environment claims under California's Fair Employment and Housing Act. A labor contract between her employer and a union contains an arbitration provision, but doesn't include a clear and unmistakable waiver of a judicial forum for an employee's statutory claims. The contract also contains a nondiscrimination provision, but a general reference to nondiscrimination laws isn't an explicit incorporation of FEHA, a court said, in affirming the denial of a motion to compel arbitration of her claims. The case is *Gutierrez v. Flying Food Grp. LLC*, 2018 BL 462478, Cal. Ct. App., 1st Dist., No. A146852, 12/13/18.

[Case: Disability Discrimination/Qualified Individual \(8th Cir.\)](#)

An Iowa meat processing plant worker with lung disease wasn't a qualified individual for purposes of her disability bias claims after she was fired for accruing 195 absences in a one-year period, given that regular attendance is an essential job function and daily reporting of her absences for family reasons didn't mitigate the fact that she took nine months of leave for reasons unrelated to her disability, and failed to provide medical verification for the absence that resulted in her firing. The case is *Lipp v. Cargill Meat Sols. Corp.*, 2018 BL 469412, 8th Cir., 17-2152, 12/19/18.

[Case: Individual Employment Rights/Discharge \(Ill. App. Ct.\)](#)

The Illinois State Police Merit Board didn't err when it terminated the employment of a state trooper who allegedly detained another trooper at gunpoint because he suspected he was having an affair with his wife, the state appellate court said. The conduct of the trooper was in direct violation of the department's rules of conduct and so the ultimate decision to dismiss him for cause wasn't unreasonable. The case is *(Mihaljevich v. Ill. State Police Merit Bd.)*, 2018 BL 468131, Ill. App. Ct., 1st Dist., 1-17-3073, 12/18/18).

[Case: Wage & Hour/Limitations \(Wash. App. Div. 3\)](#)

A slab saw operator for a Washington concrete cutting company may recover unpaid wages and related damages for a period longer than the three years provided by the statute of limitations, because a state law plainly supports that

the statute of limitations on his claim was paused pending resolution of the state department of labor's investigation of his unpaid wage claim, and the investigation hadn't been resolved when he filed his lawsuit. The case is *Peiffer v. Pro-Cut Concrete Cutting & Breaking Inc.*, 2018 BL 467244, Wash. Ct. App., Div. 3, No. 34715-0-III, 12/18/18.

[Case: Discrimination/Retaliation \(7th Cir.\)](#)

A laid-off financial reporting manager with CUNA Mutual Life Insurance Society who was sued by his employer for violating a severance agreement with a waiver of all claims by filing an age discrimination claim waited too long to file his EEO charge claiming that the suit was retaliatory. The time for him to file his EEO retaliation charge began to run when he received a letter from his employer that firmly and unequivocally stated that it would sue him if he pursued his age bias claim. The case is *GARY WROLSTAD, Plaintiff Appellant, v. CUNA MUTUAL INSURANCE SOCIETY, Defendant Appellee.*, 2018 BL 467569, 7th Cir., 17-1920, 12/18/18.

[Case: Individual Employment Rights/Wrongful Discharge \(D.N.M.\)](#)

BHP Billiton LLC, an Australian corporation, and BHP Billiton PLC, a United Kingdom corporation, are dismissed from the lawsuit of a worker alleging wrongful discharge from the Navajo Mine in Fruitland, New Mexico, operated by their subsidiary, BHP Billiton Mine Management Co. He says they were his joint employers under his employment contract, but the contract, alone, doesn't establish sufficient minimum contacts, and he showed neither that they had continuous and systematic contacts in New Mexico or that they directed his firing, as required for personal jurisdiction. The case is *Chaffin v. BHP Billiton*, 2018 BL 468370, D.N.M., Civ. 18-519 JCH/JHR, 12/18/18.

[Case: Discrimination/Employee Status \(N.D. Ind.\)](#)

A dining room manager formerly employed by St. Paul's Retirement Community wasn't entitled to trial on a hostile work environment claim, because she didn't demonstrate that St. Paul's was her employer at the time of the alleged harassment, a court said. She worked in St. Paul's dining room and her employment status was listed as "contingent" in its records, but she was employed by a different company that exercised control over her

paycheck and benefits, work schedule, and firing, and her own employment with St. Paul's ended months before the alleged harassment. The case is Jackson v. St. Paul's Ret. Cmty., N.D. Ind., 3:17-CV-934-RLM-MGG, 12/18/18

[Case: Disability Discrimination/Discharge \(N.D. Ill.\)](#)

A Comcast call-center supervisor in Illinois can go ahead with her disability bias claim after she was fired following medical leave for treatment of post-traumatic stress disorder and depression, because her ability to work doesn't mean that she isn't disabled and the suspicious timing of performance audits cited as the reason for her firing may allow finding that her disability was the real reason she was fired. The case is Harden v. Comcast, 2018 BL 467967, N.D. Ill., No. 16 C 1931, 12/18/18.

[Case: Discrimination/Discharge \(E.D. Tex.\)](#)

A female former employee of Cooke County, Texas provided enough evidence to show she may have been fired because of sex discrimination, a court said. The county argued that she couldn't provide examples of male employees who received better treatment, but she showed that she was replaced by a male employee, and she pointed to shifting explanations for her firing to rebut the argument that being hired and fired by the same decision maker indicated a lack of discriminatory intent. The case is Harp v. Cooke County, E.D. Tex., 4:17-CV-748, 12/18/18

[Case: Discrimination/Discharge \(N.D. Ill.\)](#)

A black supervisor may proceed with her claim that Comcast in Illinois fired her because of her race, rather than for failing an audit that determined whether supervisors were handling complaints in a timely manner. Questions remain, including whether or not the audit process was flawed and was used as a cover up of a discriminatory reason for the firing decision, the court said. The case is Harden v. Comcast, 2018 BL 467967, N.D. Ill., No. 16 C 1931, 12/18/18.

[Case: Labor Relations/Interference \(N.L.R.B.\)](#)

Cobalt Coal Corp. Mining, Inc. unlawfully interfered with mine workers' union activities by interrogating members about union activity, threatening to shut

down mine if employees voted in union, and sending home union member employees before completing work shifts. Cobalt must stop creating impression of surveillance of employees' union activities, coercively interrogating employees about such activity, threatening closure of mine, and telling employees they are being sent home for selecting union as labor representative, and Cobalt must compensate several employees for loss of earnings and other benefits resulting from discrimination. The case is Cobalt Coal Corp. Mining, Inc., N.L.R.B., 12/18/18.

[Case: Disability Discrimination/Reasonable Accommodation \(W.D. Wis.\)](#)

A Wal-Mart store in Wisconsin must go to trial to defend against claims that it failed to accommodate and constructively fired a visually-impaired and deaf cart attendant in the wake of reports that his family-paid job coach assaulted him, because a permanent job coach may be a reasonable accommodation and there are questions as to how much assistance the worker needed to perform essential job functions. The case is EEOC v. Wal Mart Stores, Inc., 2018 BL 468117, W.D. Wis., 17-cv-739-bbc, 12/18/18.

[Case: Individual Employment Rights/First Amendment \(W.D. Tenn.\)](#)

An adult education teacher who was fired by Shelby County Schools in Tennessee can't proceed with her claim of retaliation for reporting ongoing testing fraud and grant money misappropriation to state and local officials. She said her reports were outside her chain of command and not part of her regular duties, but her speech isn't protected by the First Amendment because it arose from her job and she reported fraud to advance the ordinary responsibilities of her employment, the court said. The case is Williams v. Shelby Cty. Bd. of Educ., 2018 BL 468363, W.D. Tenn., 2:17-cv-02050-TLP-egb, 12/18/18.

[Case: Discrimination/Hostile Work Environment \(W.D. Tex.\)](#)

A black carpenter for Pride Industries, Inc. didn't go to trial on a hostile work environment claim based on alleged racial slurs by a Mexican-American co-worker, in addition to finding a magazine clip on the bumper of his work truck and having his truck tampered with. Although the court said that his co-worker's use of the slur "mayate" was reprehensible, it stated that the co-

worker either didn't direct this word at the carpenter or used it in a vague statement, and said that the carpenter failed to connect other incidents with race discrimination. The case is Johnson v. PRIDE Indus., Inc., 2018 BL 468754, W.D. Tex., EP-18-CV-00044-FM, 12/18/18.

[Case: Discrimination/Lost Sales \(Mo. Ct. App.\)](#)

A white former retail sales consultant for AT&T can go to trial on a race-discrimination claim alleging that her black manager diverted sales away from her and made sure that black employees received credit for sales made by other associates, which affected her income. The lower court erred by applying an amended version of Missouri discrimination law, which required race to be a "motivating" rather than "contributing" factor in the decision to fire her, and the consultant made a sufficient showing that her manager made derogatory statements about white people generally and that she suffered damages as a result of disparate treatment, the court said. The case is Bram v. AT&T Mobility Servs., LLC, 2018 BL 468330, Mo. Ct. App. W.D., No. DOCKET NUMBER WD81538, 12/18/18.

[Case: Discrimination/Jurisdiction \(C.D. Cal.\)](#)

A California federal court won't yet send back to state court a former Chipotle employee's pregnancy discrimination suit, but it will allow limited discovery to determine when Chipotle became a California resident--which is what's necessary to allow the federal court to hear the suit--when the company moved its "nerve center" and "principal place of business" from Denver to Newport Beach, California. The case is Meekins v. Chipotle Servs., LLC, 2018 BL 458286, C.D. Cal., No. CV 18-08599 SJO (JPRx), 12/11/18.

[Case: Discrimination/Religious Harassment \(D. Del.\)](#)

An Islamic drug and alcohol counselor at Connections CSP couldn't show that she was subjected to religious harassment, despite her co-worker's comments about her garments and association between her Muslim faith and terrorism. The court characterized the comments as offhanded, and though they might have been insensitive, they didn't interfere with the counselor's work performance. The case is Ahmad v. Connections CSP, Inc., 2018 BL 464466, D. Del., No. Civ. No. 15-1052-CFC, 12/14/18.

[Case: Discrimination/Sexual Harassment \(M.D. Fla.\)](#)

A former medical reception technician can't proceed on her claim that BPL Plasma should be held responsible for the alleged sexual harassment she endured when a customer exposed himself to her and masturbated in her presence. The customer had appeared at the facility before and asked the technician out on a date, but, according to the allegations, the company took prompt remedial action in this instance, as the customer was subjected to criminal charges, and the company sent the technician home for the rest of the day; she will, however, be able to amend her complaint. The case is *Goines v. BPL Plasma, Inc.*, 2018 BL 464458, M.D. Fla., No. 8:18-cv-2545-T-02AEP, 12/14/18.

[Case: Discrimination/Retaliation \(N.D. Ill.\)](#)

A U.S. Department of Veterans Affairs employee couldn't show that she was suspended in retaliation for engaging in activity protected under federal civil rights law, because even though it was likely that the decision maker knew of the activity at the time of the suspension, the employee couldn't show that the activity was the cause of the suspension. The case is *Jha v. Shulkin*, 2018 BL 464358, N.D. Ill., No. 14 C 9041, 12/14/18.

[Case: Discrimination/Removal \(M.D. La.\)](#)

A Louisiana federal district court won't send back to state court an Amikids Baton Rouge employee's federal civil rights suit, despite the employee's contention that, among other things, the company didn't provide proper notice that it was seeking to move the case to federal court. A federal magistrate has reviewed the employee's arguments and recommended that the case remain in federal court, and the employee not only didn't object to the magistrate's recommendation, but she actually filed a memorandum agreeing with it. The case is *Durham v. Amikids Baton Rouge, Inc.*, 2018 BL 465797, M.D. La., 18-00559-BAJ-EWD, 12/14/18.

[Case: Discrimination/Suspension \(S.D. Fla.\)](#)

A former mechanic of Puerto Rican origin couldn't show that a Florida school board who has reassigned him to a carpenter job suspended him from the

mechanic job because of his national origin rather than his insubordination. He had earned additional income as a bus driver for the school district, but he violated the board's directive to refrain from driving while he was under investigation for falsifying vehicle maintenance reports, and he couldn't show that the board's suspension on this basis was designed to conceal national origin discrimination. The case is *Ortiz v. Sch. Bd. of Broward Cty.*, 2018 BL 466462, S.D. Fla., No. 18-60209-CIV-DIMITROULEAS, 12/14/18.

[Case: Discrimination/Discharge \(D. Ariz.\)](#)

A former field representative couldn't show that Nielson Business Media Company fired him because of his age, because he didn't cite any evidence to show that he was performing his job satisfactorily or that the company replaced him with a younger, equally qualified employee. The case is *Kitzinger v. Nielson Bus. Media Co.*, 2018 BL 466228, D. Ariz., CV16-3452-PHX-DGC, 12/17/18.

[Case: Labor Relations/Interference \(3d Cir.\)](#)

ImageFIRST Uniform Rental Service, Inc. didn't violate federal labor law by threatening to call and then calling the police when four union representatives passing out pro-union literature refused to leave a public right-of-way on a road shoulder next to the employer's facility. The employer's conduct was motivated by its reasonable concern over its property interests based on the union representatives' repeated and ongoing forays onto its private property. The case is *NLRB v. ImageFirst Unif. Rental Serv., Inc.*, 2018 BL 467400, 3d Cir., 17-3522 No. 17-3680, 12/18/18.



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From: [Morning Shift](#)
To: [Ring, John](#)
Subject: POLITICO's Morning Shift: Shutdown averted? — Rising rates — Regulatory failure
Date: Wednesday, December 19, 2018 10:04:51 AM

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2018 Newsletter Logo: Morning Shift



12/19/2018 10:00 AM EDT

By REBECCA RAINEY (rrainey@politico.com; [@RebeccaARainey](#))

With help from Ted Hesson

PROGRAMMING NOTE: [Morning Shift](#) will not publish Dec. 24-Jan 1. Our first Morning Shift newsletter of the new year will publish Jan. 2. Please continue to follow Pro Employment & Immigration issues [here](#).

Editor's Note: *This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click [here](#).*

QUICK FIX

Republican lawmakers on Tuesday were closing in on a stopgap temporary funding plan to push the fight over border wall funding (and the risk of a government shutdown) into January or February.

— **Rising rates.** Federal Reserve policymakers are expected to hike interest rates today.

— **A multiyear investigation** by NPR and Frontline found government regulators failed to act on evidence that coal miners were exposed to toxic dust that can lead to advanced black lung disease.

— **An association of CEOs** urged DHS Tuesday to back off its plan to impose new procedures on H-1B visa applications.

GOOD MORNING! It's Wednesday Dec. 19, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to raineyp@politico.com, thesson@politico.com, ikullgren@politico.com, and tnoah@politico.com. Follow us on Twitter at [@RebeccaARainey](#), [@tedhesson](#), [@IanKullgren](#), and [@TimothyNoah1](#).

ON THE HILL

SHUTDOWN AVERTED?: Senate Majority Leader [Mitch McConnell](#) said Tuesday that there will be no partial government shutdown on Friday, POLITICO's Sarah Ferris, Burgess Everett, and Eliana Johnson report. "The American people don't like it," McConnell told reporters. Also, White House Press Secretary Sarah Huckabee Sanders indicated the president might accept less than the \$5 billion he's previously demanded. More [here](#).

RISING RATES: When the Federal Reserve's Federal Open Market Committee

meets today, it will likely raise interest rates, POLITICO's Victoria Guida reports. "With the job market still growing at a steady clip and wage gains finally starting to pick up, the Fed has been raising interest rates to keep prices from rising too rapidly and to wean the economy off cheap debt that could eventually start to threaten the stability of the financial system," Guida explains. Average hourly earnings were up 3.1 percent over the previous year [in November](#), matching gains in the previous month, signaling that rising wages may continue as the labor market heads towards full employment. More from POLITICO [here](#).

WORKER SAFETY

REGULATORY FAILURE: Mine safety regulators failed for decades to recognize and address "clear signs of danger" to workers spelled out in government data, Howard Berkes, Huo Jingnan and Robert Benincasa report for NPR and PBS' Frontline. The news organizations' analysis of 30 years' collected data found that in 15 percent of dust samples coal "miners were exposed to excessive silica levels that violated federal health standards."

OSHA introduced during the Obama administration sweeping new regulations reducing silica exposure in the construction, maritime and general industry sectors. The rules [survived](#) industry court challenges and took effect in June. But because mining isn't regulated by OSHA and is instead overseen by the Mine Safety and Health Administration, miners don't fall under those protections. And a similar [rulemaking](#) at MSHA to limit silica exposure in metal and nonmetal mines, but not coal, has been shelved by the Trump administration. "Underground coal operators are required to collect an increased number of coal dust samples, use a continuous personal dust monitor to measure dust levels in real time, and notify miners more quickly about the results," an MSHA spokesperson told Morning Shift in an emailed statement. Read the NPR/PBS report [here](#).

VISA UPDATE

CEOS OPPOSE VISA OVERHAUL: Business Roundtable, an association of CEOs, urged DHS Tuesday to reconsider proposed changes to the H-1B visa process that, they say, will leave employers insufficient time to file petitions. The association urged the agency to resolve uncertainty in its proposal about when new electronic registration requirements will go into place, and to hold off implementing the rule in the meantime. The [proposed rule](#), published at the beginning of this month, would allow companies applying for the H-1B visa lottery to pre-register

electronically with USCIS, and would change the selection process to favor beneficiaries with advanced U.S. degrees. Read more about the proposal [here](#) and read the comment letter [here](#).

WORKPLACE DEATHS JUST SLIGHTLY DOWN: Data released yesterday from the Bureau of Labor Statistics found that fatalities in private mining, quarrying, and oil and gas extraction increased 26 percent in 2017 over the year prior. The total number of U.S. work-related fatalities, however, declined slightly, by 43 deaths. A 25 percent uptick in unintentional overdoses on the job prompted OSHA's Acting Assistant Secretary, Loren Sweatt, to reaffirm "the importance of this administration's efforts to tackle this crisis." More about the data [here](#); read Sweatt's statement [here](#).

IMMIGRATION MIDTERM BUST: Matt Barreto, co-founder of the polling firm Latino Decisions, argues in a New York Times op-ed that based on his own research and that of others, Trump's tub-thumping on immigration didn't stir his base in 2018 the way it did in 2016. "The net gain that Republicans thought they could count on from whites disappeared," Barreto writes, and 50 percent of voters now agree that the president and Republicans use such rhetoric "to divide Americans." Nationwide data indicate "no evidence of a surge in white Republican votes for anti-immigrant candidates." Read the op-ed [here](#).

CHILD LABOR ENFORCEMENT: Two key labor lawmakers pressured DOL's Wage and Hour Division Tuesday to increase enforcement following a recent GAO report that found that the majority of child worker fatalities occurred in agriculture. Reps. [Rosa DeLauro](#) (D-Conn.) and [Lucille Roybal-Allard](#) (D-Calif.) questioned why, given that statistic, the agriculture sector was only the fifth-most cited by the agency, and requested in a letter to Acting WHD Administrator Bryan Jarrett that Wage and Hour provide a "comprehensive" enforcement strategy. Read the letter [here](#) and the GAO report [here](#).

SECRETARIES TO SWITZERLAND: Maybe DHS Secretary Kirstjen Nielsen will get to keep her job another month. President Donald Trump announced Tuesday that the [once-beleaguered](#) secretary will travel in the presidential delegation to the World Economic Forum Davos-Klosters, Switzerland from Jan. 22 to Jan. 25. Labor Secretary Alexander Acosta also made the list. Read the press release [here](#).



COFFEE BREAK

- "At least 6 companies pull ads from Tucker Carlson's show in growing immigrant comment backlash," from [The Washington Post](#)
- "PG&E links executive departures to 'corrective actions' over safety charges," from [The San Francisco Chronicle](#)
- "Why Are These Labor Unions Opposing Medicare for All?" from [In These Times](#)
- "New York Fines Barclays \$15 Million Over C.E.O.'s Whistle-Blower Hunt," from [The New York Times](#)
- "How One Company Is Making Millions Off Trump's War on the Poor," from [The Investigative Fund](#)
- "HHS to release thousands of migrant children after policy shift," from [POLITICO](#)
- "Former Disney COO Tom Staggs Emerges as Top Candidate for CBS CEO Job," from [The Wall Street Journal](#)

THAT'S ALL FOR MORNING SHIFT.

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GovExec Today

December 20, 2018



[Lawmakers Scramble to Include Federal Pay Raise in Senate Spending Package](#) // Erich Wagner and Eric Katz

It wasn't clear Wednesday if they would be successful, or even if President Trump would sign a shutdown-averting bill of any sort.

[A Guide to Pay and Benefits During A Shutdown](#) // Erich Wagner

Although lawmakers are set to consider a two-month continuing resolution to keep agencies open, a shutdown is still possible.

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[The High Cost of Poor Citizen Service](#)

In 2017, federal agencies accounted for five of the 10 worst customer service providers across 21 major US industries. What are the leading ailments that facilitate this sub-par experience and why has it become synonymous with big government bureaucracy? Download this GBC Issue Brief to learn more about the top challenges to effective delivery of citizen services in the federal government, common consequences for agencies that fail to prioritize citizens over everything else, and steps that government can take to improve engagement with Americans and restore satisfaction in federal services [Privacy Policy](#).

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[Lawmakers Worry New VA Private Care Program Could Be a 'Train Wreck'](#) // Eric Katz

Members task Veterans Affairs secretary with avoiding familiar trappings in implementing the new law.

[VA Leadership Turnover Hindered Campaign to Curb Veterans Suicides](#) // Charles S. Clark

Watchdog finds weak metrics in prevention awareness outreach campaign.

[Consumer Financial Protection Bureau Director Restores Agency's Name](#) // Charles S. Clark

Kathy Kraninger reversed a decision by former acting director Mick Mulvaney to change CFPB's name to BCFP, citing costs and other issues.

[The Pentagon Thinks Cyber Ops Could Be The Next WMDs](#) // Justin Rohrlich

U.S. military planners are asking researchers how to fight back hackers.

[The VA's Private Care Program Gave Companies Billions and Vets Longer Waits](#) // Isaac Arnsdorf

Trump wants to supersize a program that spent almost a quarter of its funds on overhead.

[Lawmakers Want IG to Dig into Trump's Mar-a-Lago Crowd](#) // Jack Corrigan

The trio of informal associates is reported to wield outsized influence over personnel and procurement decisions at the Veterans Affairs Department.

[States Eye Cap-and-Invest Transportation Policy to Reduce Emissions](#) // Dave Nyczepir

Savings would be spent on public transit and zero-emission vehicles.

[DHS Seeks National Security Tech from Small Businesses](#) // Jack Corrigan

Officials finalized the 10 focus areas for groups participating in next year's Small Business Innovation Research program.

[For the First Time, a U.S. State Will Have a Majority-Female Legislature](#) // Bill Lucia

The change comes during a year when women candidates had a strong showing at the state and federal levels.

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[The High Cost of Poor Citizen Service](#)

In 2017, federal agencies accounted for five of the 10 worst customer service providers across 21 major US industries. What are the leading ailments that facilitate this sub-par experience and why has it become synonymous with big government bureaucracy? Download this GBC Issue Brief to learn more about the top challenges to effective delivery of citizen services in the federal government, common consequences for agencies that fail to prioritize citizens over everything else, and steps that government can take to improve engagement with Americans and restore satisfaction in federal services [Privacy Policy](#).

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TOP STORIES

[Senate Negotiations Keep Labor Nominees in the Balance \(1\)](#)

By Tyrone Richardson and Nancy Ognanovich

Senate leadership is still weighing a possible deal to confirm several of President Donald Trump's nominees before the end of the 115th Congress, including some in labor-related agencies.

[Republicans Stand Firm Against EEOC Nominee Feldblum \(1\)](#)

By Tyrone Richardson and Paige Smith

Senate Republicans are threatening to end the 115th Congress without confirming President Donald Trump's Democratic pick for the agency tasked with fighting workplace harassment and discrimination. Such action could hobble the federal agency amid the #MeToo movement.

[Rift Splitting Big Labor Lingers Over Election, Picket Line Wins](#)

By Chris Opfer and Andrew Wallender

Just when the AFL-CIO regained some political momentum through wins at the ballot box and on the picket line, it's running into internal division about whether to prioritize broader progressive causes over core workplace-policy

issues.

[FedEx Defeats Class Status in Driver Classification Suit](#)

By Perry Cooper

FedEx Ground Package Sys. Inc. won't have to face a certified class of delivery drivers alleging they were underpaid because FedEx misclassified them as independent contractors, a federal court said in a Dec. 19 unpublished opinion.

DISCRIMINATION

[Police Chief Must Defend Officer's Race Bias, Retaliation Claims](#)

By Porter Wells

The Fort Worth, Texas, chief of police can't use qualified immunity to shield himself from a black sergeant's race-based hostile work environment and retaliation claims, the U.S. Court of Appeals for the Fifth Circuit has ruled.

[Wilmington Trust to Pay \\$700K to Settle Disability Bias Claims](#)

By Porter Wells

Wilmington Trust Corp. will pay \$700,000 to settle allegations it discriminated against disabled workers by requiring them to perform their job duties without restrictions, according to a court order entered Dec. 19 by a federal court in Manhattan.

WAGE & HOUR

[Toyota Mandatory Morning Exercises Unpaid, Contract Workers Say](#)

By Jon Steingart

Toyota Motor Corp.'s Indiana plant doesn't pay contract employees for mandatory morning exercises and other essential work activities, a contract employee alleges in a new class complaint.

[EQT's \\$2.8M Settlement Over Roughneck Overtime Approved](#)

By Jon Steingart

EQT Corp. and 107 oilfield workers won court approval of a \$2.8 million settlement to resolve overtime claims stemming from long work days.

[Belk Stores Get OK to Settle Workers' Overtime Claims](#)

By Carmen Castro-Pagan

Belk Inc. and its workers won court approval to settle claims that the department store chain failed to pay overtime compensation to hundreds of sales team managers.

[FedEx to Pay \\$2M to Settle NY Wage Lawsuit on Worker Status](#)

By John Herzfeld

FedEx Ground Package System Inc. agreed to pay \$2 million to settle a New York lawsuit alleging that it underpaid some 500 drivers by unlawfully classifying them as independent contractors.

[CITGO Can't Beat Louisiana Spill Cleanup Workers' Claims](#)

By Peter Hayes

CITGO Petroleum Corp. failed to shake off claims by workers hired to clean up a toxic 2006 spill from the company's facility in Lake Charles, La.

STATE & LOCAL LAWS

[Philadelphia Predictive Scheduling Gets Mayor's Signature](#)

By Andrew Wallender

Philadelphia will become the fifth city in the country mandating increased scheduling predictability for employees. Mayor Jim Kenney (D) Dec. 20 signed predictive scheduling legislation that was passed by the city council earlier this month.

[Ohio Bans Gender Identity Bias Against State Employees](#)

By Alex Ebert

Ohio will no longer permit employment discrimination against state employees because their "gender identity or expression," according to an executive order signed Dec. 19.

[Missouri Employers Get Arbitration Victory From State High Court](#)

By Alex Ebert

The Missouri Supreme Court closed the door to a common challenge to arbitration agreements, giving more power to the business-favored agreement that keeps employment litigation private.

[Washington Family Leave Law on Supreme Court's Radar](#)

By Jon Steingart

The U.S. Supreme Court will consider Jan. 4 whether to take a case that asks if federal labor law preempts a Washington state law that lets workers use accrued paid time off to care for a sick family member.

[States of Work: Texas Gig Rules, Mich. GM Worker Scholarships](#)

By Chris Marr

Dive into the "States of Work" roundup of state and local labor and employment developments. This week, Texas looks to clarify that 'gig' workers are independent contractors and not eligible for unemployment benefits, and a Michigan university offers scholarships to laid-off GM workers.

LABOR RELATIONS

[Brooklyn Cablevision Workers' Bid to Oust Union Rebooted](#)

By Robert LaFolla

The National Labor Relations Board revived a bid by Brooklyn-based cable company workers to kick out their union, despite previous rulings saying the

company illegally undermined the workers' support for the union.

[LA Hotel Workers Reach Tentative Deal; Strike Still Possible](#)

By Paige Smith

Southern California hospitality workers at six hotels in the Los Angeles metropolitan area averted a strike Dec. 19 by reaching a tentative agreement, UNITE HERE spokesman Andrew Cohen told Bloomberg Law.

[Wages Are Up in Latest Union Data, Due to 'First Contracts'](#)

By Joanne Letada

First-year wage hikes negotiated in union contracts are rising as 2018 ends.

NLRB

[NLRB Weekly Summary of Cases, Dated Nov. 26-30, 2018](#)

Summary of NLRB decisions for week of Nov. 26-30, 2018.

IMMIGRATION

[Florida Lawmakers to Take Another Stab at Mandating E-Verify](#)

By Chris Marr

Florida employers would be required to check the employment eligibility of job candidates through the federal E-Verify system under a pair of bills pre-filed for the state's 2019 legislative session.

BLOOMBERG LAW INSIGHTS

[INSIGHT: SEC Whistleblower Program Turns Eight—Thousands of Tips, Trending Up](#)

By Arian M. June and Ryan M. Kusmin

Two Debevoise & Plimpton attorneys examine the Securities and Exchange

Commission whistleblower program, now in its eighth year, and point out five key takeaways from the commission's 2018 report and look at trends for the growing number of tips and awards in 2019.

[INSIGHT: You Better Check Twice Before Sending That Holiday Corporate Gift](#)

By Philippe Weiss

Stressed by holiday gift-giving at work? How does an attorney or their client know what's appropriate ... too expensive ... too cheap? Philippe Weiss, president of Seyfarth Shaw at Work/WorkRight Solutions takes a look at how attorneys can help with issues around corporate gifts to make sure they don't end up on the "naughty" list.

BUSINESS OF LAW

[2019 Outlook: Big Law Firms Prep for Projected Economic Slowdown](#)

By Rebekah Mintzer

Prosperous times aren't over yet for major U.S. law firms, but many in 2019 will have to consider how they'll respond when the economy likely hits a downswing.

HEALTH CARE & BENEFITS

[Pennsylvania Pension Fund Paid \\$1 Billion in Fees to Managers](#)

By Janet Lorin

Pennsylvania's largest public pension fund paid \$1 billion in expenses to outside managers in fiscal 2017 and should consolidate its investment office with the state employees' fund, according to a study.

[BNP Paribas Says It Will Lose Access to Some U.S. Pension Assets](#)

By Miles Weiss

BNP Paribas SA will have a harder time managing Americans' pension assets

after the U.S. Labor Department exercised its rarely used power to prevent banks with a criminal taint from managing certain retirement assets.

[Vanderbilt Retirement Fee Class Action Paused Pending Mediation](#)

By Carmen Castro-Pagan

A lawsuit between Vanderbilt University and workers accusing it of mishandling their retirement benefits will be paused while the parties seek to resolve their differences through mediation.

SAFETY & HEALTH

['Barista Wrist' Is the Emerging Workplace Hazard at Coffee Shops](#)

By Michael J. Bologna

"Barista wrist" is emerging as a much more consequential hazard for coffee shop workers than sharp knives, wet floors, or espresso machines bubbling at 200 degrees.

ALSO IN THE NEWS

[U.S. Jobless Claims Rise, Though Still Show Solid Labor Market](#)

By Katia Dmitrieva

Filings for U.S. unemployment benefits rose for the first time in three weeks while remaining near levels showing a tight labor market.

[The Dallas Mavericks' New CEO Is Cleaning Up a #MeToo Mess](#)

By Mary Pilon

The chief executive officer of the Dallas Mavericks, Cynthia "Cynt" Marshall, arrived at the office on media day in September with her phone already buzzing. Most of the messages concerned a blistering 43-page report chronicling two decades of toxic workplace culture in the team's front office.

[Layoffs Loom Large as Banks Weigh Funding Lampert's Sears Bid](#)

By Eliza Ronalds-Hannon, Lauren Coleman-Lochner and Katherine Doherty

Bankers meeting to discuss financing for Sears Holdings Corp.'s impending bankruptcy erupted in disbelief when a headline crossed their smartphone screens. Its subject: them.

LATEST CASES

[Case: Discrimination/Discharge \(6th Cir.\)](#)

A female human resources supervisor for Pinnacle Foods Group was properly denied a trial on her claim that she was fired because of her sex, rather than for her rude demeanor and abrasiveness that she didn't correct despite repeated coaching. Her claim didn't go to trial because she failed to show that a comparable male employee engaged in similar behavior and was treated more favorably, the court said. The case is *Kinch v. Pinnacle Foods Grp., LLC*, 2018 BL 469868, 6th Cir., 18-1400, unpublished 12/19/18.

[Case: Individual Employment Rights/Whistle-Blowing \(Tex. App., 14th Dist.\)](#)

A teacher for DeKaney High School may proceed with his Texas whistleblower claim that he was suspended and later fired in retaliation for reporting unlawful drug use and dealing by students and a co-worker on school grounds to the principal and several district officials and agencies. The teacher may show that he reasonably believed that the students and co-worker were engaging in illegal activity, and that his reports—over a two-week period—motivated his firing. The case is *Van Deelen v. Spring Indep. Sch. Dist.*, 2018 BL 471784, Tex. App., 14th Dist., 14-17-00432-CV, 12/20/18.

[Case: Discrimination/Failure to Prosecute \(W.D. Tenn.\)](#)

A Landau Uniforms employee can't proceed with claims including race-discrimination and sexual harassment because of her failure to prosecute these claims. Following a four-part test established by the Sixth Circuit, the court said that her failure was willful because she didn't respond to two motions and court orders and offered no explanation, the company was prejudiced by

her failure because it spent time and resources defending the case, she was warned that her case might be dismissed for failure to comply with the court's orders, and no sanction other than dismissal would cure her failure to prosecute. The case is *Gory v. Landau Uniforms*, 2018 BL 470007, W.D. Tenn., 2:17-cv-2922-JPM-tmp, 12/19/18

[Case: Discrimination/Retaliation \(E.D. Pa.\)](#)

A director of information technology may not proceed with his claim that Cheyney University of Pennsylvania fired him in retaliation for participating in a co-worker's EEOC investigation. The director was fired for ordering a shutdown of the university's website, getting into an altercation with a co-worker, and having multiple disputes with co-workers, and he didn't show that his participation in the EEOC investigation was a factor in the firing decision, the court said. The case is *Hudson v. Cheyney Univ. of Pa.*, 2018 BL 467041, E.D. Pa., 14-2552, 12/14/18.

[Case: Individual Employment Rights/Contracts \(Fed. Cl.\)](#)

A former Federal Aviation Administration employee can't proceed with her claim that the agency breached its agreement to change her personnel file to reflect that she'd resigned, which was part of the settlement of her claims after it terminated her. Her claim was untimely and, since no employers had reviewed her personnel file in ten years, she can't show any damages from the breach, the court said. The case is *Diaz v. United States*, 2018 BL 470449, Fed. Cl., 18-286C, 12/19/18.

[Case: Individual Employment Rights/Due Process \(Cal. Ct. App., 4th Dist.\)](#)

The city of Adelanto, California, can't dismiss former senior management analyst's due process claim that he was fired during a closed session meeting without proper notice or a hearing. The city says that the analyst was fired for reasons involving public interests, its financial issues, but its conduct wasn't protected activity under the state's anti-SLAPP statute and he was entitled to an opportunity to discuss the issues related to his employment. The case is *Borja v. City of Adelanto*, 2018 BL 470037, Cal. Ct. App., 4th Dist., E068720, unpublished 12/19/18.

[Case: Labor Relations/Decertification Petition \(N.L.R.B.\)](#)

Regional director erred in dismissing decertification petition based on pending unfair labor practice charges settled after administrative law judges found charges meritorious but before Board resolved charges. Since relevant charges were withdrawn without final adjudication of their merits, there was no valid basis for refusing to reinstate petition, and preventing employees from expressing wish for continued union representation for more than four years based on subsequently withdrawn charges settled without final adjudication would harm employees' statutory rights to bargaining. The case is Cablevision Systems Corp., 2018 BL 470020, N.L.R.B., 29-RD-138839, 12/19/18.

[Case: Individual Employment Rights/Public Employees \(Cal. Ct. App., 4th Dist.\)](#)

A San Diego homicide detective doesn't succeed in disqualifying the city attorney's office even though an assistant city attorney questioned her and got answers about conversations with her attorney, representing her in her whistleblowing case, during an internal affairs investigation into the leak of the police report of the sexual assault of a minor, represented by the same attorney in a suit alleging the mishandling of that case. Although forcing her to divulge the communications violated the attorney-client privilege, there's no unfair advantage to the city because she didn't tell her attorney anything about the other case. The case is City of San Diego v. Superior Court of San Diego Cty. ex rel. Hoover, 2018 BL 469877, Cal. Ct. App., 4th Dist., No. D073961, 12/19/18.

[Case: Disability Discrimination/Medical Examination \(E.D. Mich.\)](#)

A former teacher for Ann Arbor Public Schools in Michigan can't argue that the school district violated disability law when it made her undergo a psychological test, because a prior court's decision that there was reason to doubt her ability to do her job—from an earlier case in which she sued the school district for the same test, saying that it violated her Constitutional rights—precludes her from re-arguing that issue now. Alternatively, the court also found that she should have brought her disability claim at the same time as her Constitutional claim. The case is Down v. Ann Arbor Pub. Sch., 2018 BL 469654, E.D. Mich., No. 17-13456, 12/19/18.

[Case: Discrimination/Discharge \(Tex. App. 9th Dist.\)](#)

A female employee may not proceed with her claim that the Texas Department of Transportation fired her because of her sex, rather than for allegedly taking property from the Department for personal use. The employee didn't show that she was treated differently than her male co-workers under similar circumstances or that her sex was a factor in the firing decision, the court said. The case is *Granger v. Tex. Dep't of Transp.*, 2018 BL 471903, Tex. App., 9th Dist., 09-17-00051-CV, 12/20/18.

[Case: Disability Discrimination/'Qualified Individual' \(2d Cir.\)](#)

A former police officer for the Town of Ramapo, New York, loses his disability discrimination claims based on his inability to use vacation days or accrue vacation time while he was on disability status for arm and shoulder injuries, because he wasn't qualified for the job at that time. He didn't show that he could still perform the core duties of a police officer, with or without accommodation, and the exception for 'qualified individuals' given to retired employees for purposes of collecting retirement benefits is not applicable to his case. The case is *Smith v. Town of Ramapo*, 2018 BL 469372, 2d Cir., 18-148, 12/19/18.

[Case: Disability Discrimination/Discharge \(9th Cir.\)](#)

A furniture store employee loses his claim that he was fired because of injuries from a workplace accident, even though he was fired very shortly after the accident, because it's undisputed that he showed up to work with an elevated blood alcohol level in violation of store policy. The case is *O'Brien v. R.C. Willey Home Furnishings*, 2018 BL 471276, 9th Cir., 16-16677, unpublished 12/19/18.

[Case: Discrimination/Discipline \(N.D. Tex.\)](#)

A white male employee can't go to trial against Sabre GLBL, Inc. on race or sex-discrimination claims based on his placement on a performance improvement plan. He couldn't show that he suffered an adverse employment action, because getting a smaller bonus and not receiving stock options weren't connected to the PIP, and he resigned instead of making an effort to

improve his performance or address what he saw as unjust requirements, the court said. The case is Yoakum v. Sabre GLBL, Inc., 2018 BL 471500, N.D. Tex., 4:18-CV-127-A, 12/19/18.

[Case: Individual Employment Rights/False Claims Act \(S.D. Ohio\)](#)

A registered nurse for Care Connection of Cincinnati may proceed with her whistle-blower claim that she was forced to quit in retaliation for reporting patient coding errors to her supervisors, and for refusing to follow allegedly fraudulent instructions for reviewing Medicare reimbursement forms. The RN may show that she reasonably believed that Care Connection repeatedly asked her to engage in fraudulent conduct, and that she felt compelled to quit because of its actions. The case is Dieckmann v. Care Connection of Cincinnati, LLC, 2018 BL 470930, S.D. Ohio, No. 1:17-cv-73, 12/19/18.

[Case: Discrimination/Sanctions \(S.D. Miss.\)](#)

A fired Medline Industries, Inc., employee bringing an age-discrimination suit was denied his request to enter a default judgment or impose sanctions on the company based on an alleged perjurious statement by a senior vice president for sales. The vice president testified that he didn't recall using a saline syringe in a sexually suggestive way towards a female employee, which contradicted another employee's sworn statement, but the fired employee couldn't show that the vice president truly didn't recall the incident or that the company acted in bad faith. The case is Rogers v. Medline Indus., Inc., 2018 BL 470757, S.D. Miss., 1:17cv118-HSO-JCG, 12/19/18.

[Case: Wage & Hour/Class Certification \(D.N.J.\)](#)

FedEx delivery drivers must give more information to move forward with their class-action claim for improper wage deductions under New Jersey law, because they didn't make any specific assertions about the common issues of their claim beyond that they were subject to the same types of wage deductions. The case is Carrow v. FedEx Ground Package Sys., Inc., 2018 BL 470823, D.N.J., No. 16-3026 (RBK/JS), unpublished 12/19/18.

[Case: Individual Employment Rights/First Amendment \(E.D. Mich.\)](#)

A high school teacher may proceed against the Ann Arbor Public Schools and

individual school district officials on her claim of retaliation, including being put on administrative leave, not being allowed to teach after passing a psychological examination, and being falsely threatened with a tenure action, for filing a prior lawsuit contesting a requirement that she take the psych exam. The adverse actions she asserts are sufficient to make out a retaliation claim, the court said. The case is *Down v. Ann Arbor Pub. Sch.*, 2018 BL 469654, E.D. Mich., No. 17-13456, 12/19/18.

[Case: Discrimination/Retaliation \(E.D. Mich.\)](#)

A production manager fired from Aspen Techs., Inc. couldn't go to trial on her claim that she was retaliated against for complaining to managers about race-based hiring practices and racial discrimination. The court found evidence that the two managers she complained to made the decision to fire her in conjunction with the company's principal owner, but there were documented complaints about her management style, and an "unusually large" number of employees quit under her management, which the court said overcame any inference of retaliation. The case is *Kenney v. Aspen Techs., Inc.*, 2018 BL 470653, E.D. Mich., 17-CV-11282, 12/19/18.

[Case: Wage & Hour/Joint Employers \(S.D.N.Y.\)](#)

Floor managers for various Manhattan hotels must give more information to argue that the hotels operated as one 'employer' for purposes of their claim that they were misclassified as overtime-exempt managerial employees, because, among other things, their assertion that the hotels transferred employees between hotels isn't enough to show that they were all subject to the same overtime policies. The case is *Kwan v. Sahara Dreams Co. II Inc.*, 2018 BL 470679, S.D.N.Y., No. 17-CV-4058 (RA), 12/19/18.

[Case: Discrimination/Class Actions \(N.D. Ill.\)](#)

A class of female current and former employees suing two Chicago-area Ford Motor Company facilities for sexual harassment and race discrimination were denied their request to stay the distribution of EEOC conciliation claims until the court could rule on their class certification motion. By accepting a monetary payment through the EEOC-brokered claims process, the employees would waive their right to have claims heard by a court or a jury, but in the absence of

a certified class, the group members didn't have standing to seek injunctive relief collectively, and the court said they didn't show that the court had the authority to intervene in a process conducted according to the EEOC's congressional mandate. The case is *Van v. Ford Motor Co.*, 2018 BL 470496, N.D. Ill., No. 14-cv-8708, 12/19/18.

[Case: Discrimination/Qualified Immunity \(5th Cir.\)](#)

The chief of the Fort Worth Police Department does not have qualified immunity over a black sergeant's race-based hostile work environment claim under 42 U.S.C. § 1983, a court said. The sergeant said that his ability to work was undermined by discriminatory bullying over more than three years, including false accusations of theft and a colleague telling supervisors to treat him as "their enemy," and the court said that there was no dispute the chief knew about the harassment, especially in light of an outside investigation that corroborated the sergeant's claims. The case is *Johnson v. Halstead*, 2018 BL 470993, 5th Cir., 17-10223, 12/19/18.



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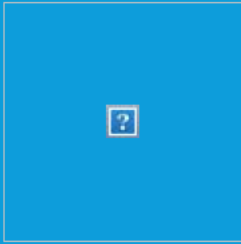
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From: [Bloomberg Law Daily Labor Report](#)
To: [Ring, John](#)
Subject: First Move: AFL-CIO Fights Internal Rift • Law Firms Prep for Downturn
Date: Thursday, December 20, 2018 7:07:00 AM



What you need to know to start your day.

AFL-CIO Fights Internal Rift • Law Firms Prep for Downturn



By [Patricio Chile](#)

AFL-CIO LOOKS TO TAMP DOWN RIFT

With great power comes great responsibility, and plenty of political headaches. At least that's the case for the AFL-CIO, which is grappling with an internal rift among its 55 member unions.

AFL-CIO unions are torn over whether to hunker down on core labor policy issues or side up with a big tent progressive movement. That's not a new debate for organized labor, but it comes at a critical juncture, Chris Opfer and Andrew Wallender [report](#).

LAW FIRMS PREP FOR FUTURE DOWNTURN

Times have been good for the country's large law firms since they regained their financial footing post-Great Recession. But with the economy projected to hit a smaller but still significant downturn sometime in 2019 or 2020, some firms have been considering budget cutting measures and headcount reduction to help soften the coming blow.



Big firms can also find a silver lining in a possible recession if they build up practice areas that attract work in difficult times, like bankruptcy and distressed debt trading. A slowdown could also present new merger opportunities for firms that want to consolidate their strengths to push back against growing economic headwinds. Rebekah Mintzer has [the story](#).

OTHER STORIES WE'RE WATCHING

- **Sen. Orrin Hatch's** retirement leaves a large hole in the Republican ranks. Warren Rojas [explores the legacy](#) of this prolific Utah lawmaker, who is leaving office after 40 years—and more than 800 bills signed into law—on Capitol Hill.
- Congress could avoid a government shutdown with a **stopgap funding** bill, but that may throw into doubt efforts to give **federal employees** a pay

raise. Sen. Ben Cardin (D-Md.) said on a press call that it's unclear whether Congress can retroactively overrule President Donald's Trump planned pay freeze after Jan. 1. Andrew Wallender is following the story.

- Ohio Gov. John Kasich (R) signed an [executive order](#) banning **gender identity discrimination** against state employees. Alex Ebert has the [story](#).
- Two **Debevoise & Plimpton** attorneys in a Bloomberg Law Insight [examine](#) the **SEC whistleblower** program, now in its eighth year, and point out five key takeaways from the commission's 2018 report and look at trends for the growing number of tips and awards in 2019.
- Texas is looking to clarify that **gig workers** are independent contractors and not eligible for unemployment benefits, and a Michigan university is offering scholarships to laid-off GM workers. Check out these stories and more later today in our weekly "States of Work" column, and check back every week for our roundup of state and local labor and employment developments.
- The average union-negotiated **wage hike** reached 3.4 percent as of Dec. 16, up slightly from 3.3 percent two weeks earlier, as tracked and calculated by Bloomberg Law analysts. Check back later today and every two weeks for more of the latest figures, facts, and trends in wages.
- Stressed by holiday gift-giving at work? Philippe Weiss, president of Seyfarth Shaw at Work/WorkRight Solutions [offers](#) a Bloomberg Law Insight on how attorneys can help with issues around **corporate gifts**.
- The **Missouri Supreme Court** has closed the door to a common challenge to **arbitration agreements**, giving more power to the business-favored agreement that keeps employment litigation private. Alex Ebert has the [story here](#).
- The friendly neighborhood coffee shop is emerging as a much more dangerous workplace environment than loyal java junkies ever imagined. Insurance industry data reveals cafes and coffee shops experience 45 percent more lost time due to **workplace injuries** than all other restaurant types. Michael J. Bologna will have more later today.
- The **Employment and Training Administration** releases its weekly jobless claims report at 8:30 a.m.

AROUND THE WEB

- In response to exorbitant rent prices in Los Angeles, some **film industry** assistants, craftspeople, and working actors are adopting a transient

lifestyle, according to [the Hollywood Reporter](#).

- **Germany** passed an immigration law to attract **skilled workers** from outside the **European Union** in an attempt to remedy a chronic labor shortage, [the Guardian reports](#).
- Uber lost an appeal against a U.K. court ruling that its drivers should be treated as workers rather than as self-employed, [BBC News reports](#).
- **Remote jobs** are becoming more popular in the U.S. with more than 4 million people working from home at least half the time and some earning over \$100,000, [CNBC reports](#).

For all of today's Bloomberg Law headlines, visit [Daily Labor Report](#)



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Subject: Lawmakers' Bid to Include Federal Pay Raise in Senate Spending Package Fails
Date: Thursday, December 20, 2018 7:48:59 AM

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GovExec Update

December 20, 2018



[Lawmakers Scramble Unsuccessfully to Include Federal Pay Raise in Senate Spending Package](#) // Erich Wagner and Eric Katz

A handful of senators late Wednesday scrambled to try to ensure that federal workers would receive a pay raise in 2019 if Congress is able to pass a shutdown-averting, stop-gap funding bill acceptable to President Trump. Roughly one-third of federal agencies are scheduled to lose funding after Friday.

[Read full article »](#)

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Date: Thursday, December 20, 2018 10:05:22 AM

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2018 Newsletter Logo: Morning Shift



12/20/2018 10:00 AM EDT

By REBECCA RAINEY (rrainey@politico.com; [@RebeccaARainey](#))

Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click [here](#).

QUICK FIX

The Trump administration policy that turned away asylum seekers who claimed to suffer domestic or gang violence was mostly struck down Wednesday, another legal setback to the White House's attempts to deter migrants from trekking to the U.S.-Mexico border.

— **The Federal Reserve raised interest rates**, and some economists worry it will hurt wage gains.

— **Several labor nominees appear unlikely to advance** before Friday, threatening to leave the EEOC without a quorum next year.

— **The Senate passed a stopgap spending bill late** Wednesday to prevent a partial government shutdown and kick the can on border wall spending by seven more weeks.

GOOD MORNING! It's Thursday, Dec. 20, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to rrainey@politico.com, thesson@politico.com, ikullgren@politico.com and tnoah@politico.com. Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren), and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

PROGRAMMING NOTE: *[Morning Shift](#) will not publish Dec. 24-Jan 1. Our first Morning Shift newsletter of the new year will publish Jan. 2.*

POLICY LIMITING ASYLUM STRUCK DOWN: A federal judge on Wednesday quashed most of a Trump administration policy that blocked migrants who claimed to suffer domestic or gang violence from obtaining determinations of "credible fear" of return to their home country — the first step in an asylum claim, POLITICO's Ted Hesson reports. U.S. District Judge Emmet Sullivan ordered the Trump administration to provide new credible fear hearings for the 12 plaintiffs in the case and, in a related order, demanded that deported plaintiffs be brought back to the U.S. at no cost to them. More from Hesson [here](#).

RISING RATES, LESS RAISES: The Federal Reserve raised its main borrowing rate on Wednesday for the fourth time this year, brushing aside calls from President Donald Trump to hold off on further interest rate hikes, POLITICO's Victoria Guida reports. Though the move comes as the central bank underscores the growing number of jobs amid a low unemployment rate, Josh Bivens, an

economist at the left-leaning Economic Policy Institute, told Morning Shift the hikes have begun to slow the economy and "give workers less leverage."

"As unemployment has gotten low, we have finally started to see a small uptick in wage growth," Bivens said. "I think that's going to be short lived if they keep on the path of interest rate hikes." The Fed indicated Wednesday that fewer rate hikes might be on the way next year based on expectations for slower economic growth, according to Guida. More from POLITICO [here](#).

ON THE HILL

EEOC'S UNCERTAIN FUTURE: It's looking unlikely that senators will be able to advance several labor nominees before the end of the 115th Congress, POLITICO's Ian Kullgren reports. Sen. [Mike Lee](#) (R-Utah) on Wednesday blocked the confirmation of Chai Feldblum, a Democratic nominee to the Equal Employment Opportunity Commission, queuing up a Democratic blockade of all HELP Committee nominees unless Feldblum and Mark Pearce, a Democratic nominee to the NLRB, are confirmed.

Without Feldblum's confirmation, the EEOC will lack a quorum next year. More [here](#).

SENATE STOPGAP: The Senate passed a plan late Wednesday night that would avert a government shutdown and sidestep the spat over border wall spending until Feb. 8, POLITICO's Jennifer Scholtes reports. The continuing resolution would also extend current spending levels for nine departments and various agencies, as well as authority for DHS' E-Verify program for checking the immigration status of U.S. workers and the EB-5 visa program for foreign entrepreneurs who make substantial investments in the United States. The House is expected to vote the package today. More [here](#) and [here](#).

Related: "McConnell moves to avert shutdown disaster," from [POLITICO](#).

UNIONS

DIGITAL NEWSROOMS ORGANIZE: The number of digital media outlets that have unionized is trending upward, Paul Farhi reports for the Washington Post. Vox Media, Vice and HuffPost are just a few of the **outlets** that have voted to unionize since 2015.

"Such agreements have created a rising tide of compensation at other digital companies," Farhi reports. Unions have gained too. The Writers Guild of America East has grown by about 1,500 new members since the unionization efforts began, he writes. The effort has been aided by the fact that areas like New York and D.C., home to many of those digital outlets, don't have "right-to-work" laws. More from Farhi [here](#).

HOME FOR CHRISTMAS EVE: The president on Tuesday night decided to give federal employees a longer "Christmas break." An executive order signed by Trump will grant all federal employees Monday off for Christmas Eve. Read the order [here](#).

Related: "Trump signs executive order making Christmas Eve a holiday for federal workers," from [The Washington Post](#)

TURBULENCE AHEAD: Lawmakers may have kicked the border wall can down the road, but the fight over a partial shutdown of nine agencies in early February won't be any less of a headache with a newly divided Congress. POLITICO's Jennifer Scholtes and Caitlin Emma lay out some of the reasons:

It could hurt already-low morale at the affected agencies: "A drawn-out funding lapse means employees could be on the hook, though, for making mortgage, student loan or car payments before that late paycheck rolls in."

Administrative delays: Loan processing at the Small Business Administration would be slowed. More [here](#).

MORE WORKERS LIGHTING UP: The number of workers using drugs in the U.S. increased by double digits between 2015 and 2017 in five of 16 major industry sectors analyzed by medical testing company Quest Diagnostics. Marijuana was the most common drug detected among those tested, and some industries including construction, manufacturing and transportation saw at least a 20 percent increase in positive tests for marijuana between 2015 and 2017, according to the analysis. The number of workers testing positive for cocaine last year is also higher in most sectors compared with 2015. Read the report [here](#).

AT THE BORDER

WILL THE WALL STOP THE DRUGS? As more states have moved to legalize marijuana, significantly less has been entering the country between ports of entry where President Donald Trump's border wall would stand, David Bier at the

libertarian Cato Institute writes.

"Drug smuggling activity now primarily occurs at ports of entry, where a border wall would have no effect," Bier explains in a report released Wednesday. "By weight, the average port inspector seized 8 times more cocaine, 17 times more fentanyl, 23 times more methamphetamine, and 36 times more heroin than the average Border Patrol agent seized at the physical border in early 2018." Read the report [here](#).

DHS OVERSIGHT HEARING: Secretary Kirstjen Nielsen will testify before the Judiciary Committee this morning for the first time in her official role leading the agency. Advocacy groups, Families Belong Together, Center for Popular Democracy and the National Domestic Workers Alliance are planning a protest over the recent death of a 7-year-old girl in Border Patrol custody. The hearing starts at 10:15 a.m.; watch a livestream [here](#).

COFFEE BREAK

- "Agricultural empire behind Halos and Wonderful pistachios raises minimum hourly wage to \$15," from [The Los Angeles Times](#)
- "She Wouldn't Promise Not to Boycott Israel, So a Texas School District Stopped Paying Her," from [The New York Times](#)
- "Trump administration to notify Congress and media about border deaths within 24 hours," from [POLITICO](#)
- Opinion: "The new geography of opportunity," from [The Hill](#)
- "Trump Is Outsourcing the Migrant Crisis to Mexico," from [The New Republic](#)
- "The Janus decision was supposed to hurt public-employee unions. In Minnesota, their membership is up," from the [MinnPost](#)
- "'I Thought I Was Done For': Tight Job Market Opens Doors for Ex-Convicts," from [The Wall Street Journal](#)
- "Leading labor union says new NAFTA doesn't do enough to help autoworkers," from [POLITICO](#)
- "The Dark Side Women Face Driving for Uber and Lyft," from [Bloomberg](#)

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— "Uber loses appeal against landmark UK workers' rights ruling," from [CNBC](#)

THAT'S ALL FOR MORNING SHIFT.

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GovExec Breaking News

December 21, 2018



['Confusion' and 'Surprise:' How Agencies and Employees Are Gearing Up for a Shutdown](#)

// Eric Katz

Impacted federal agencies were preparing for a government shutdown on Friday, with different offices taking different approaches as they readied furlough notices and other formal procedures that occur during an appropriations lapse.

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EMPLOYMENT

Friday, December 21, 2018



TOP NEWS

FedEx Paying \$2.1M To End OT Underpayment Suit In NY

FedEx will pay \$2.1 million to end a suit by the New York attorney general alleging the shipping company underpaid hundreds of workers by misclassifying them as independent contractors, according to a settlement agreement filed Thursday in New York state court. [Read full article »](#)

Goldman Must Share Some Proof Of 'Boys' Club' In Bias Suit

A Manhattan federal magistrate judge ruled Thursday that Goldman Sachs must share limited evidence related to its alleged "boys' club" culture with women who accuse the investment bank of gender discrimination, but not as much as the plaintiffs sought. [Read full article »](#)

Farm Owes Worker \$850K After Firing Her For Reporting Rape

A Florida federal jury on Wednesday sided with the Equal Employment Opportunity Commission, finding that a farm allowed one of its workers to be sexually harassed by her supervisor and then fired her for reporting that he had raped her, and awarding the woman \$850,000 in damages.

[Read full article »](#)

Invalid PAGA Waiver Dooms PennyMac's OT Arbitration Bid

Mortgage lender PennyMac can't make an ex-worker arbitrate a proposed overtime class action, a California appeals court said Wednesday, because the parties' arbitration pact included an illegal waiver of the worker's rights under California's Private Attorneys General Act that rendered the entire agreement unenforceable. [Read full article »](#)

Florida Senate Settles Suit Over EEOC Harassment Complaint

The Florida Senate told a federal court Thursday that it has reached a deal to drop a suit against the U.S. Equal Employment Opportunity Commission that sought to bar a discrimination case the agency filed after a legislative aide accused a former senator of sexual harassment. [Read full article »](#)

DISCRIMINATION

No Pause For EEOC Award Process In Ford Harassment Suit

An Illinois federal judge denied a bid to delay the distribution of notices telling some Ford employees they are eligible for compensation in the automaker's settlement with the U.S. Equal Employment Opportunity Commission, saying Wednesday those workers can decide for themselves whether to accept the award or take part in a parallel sexual harassment suit. [Read full article »](#)

Ex-Tinder Worker Must Arbitrate Sex Harassment Claims

An ex-Tinder worker accusing the dating app of sexual harassment and retaliation should hash it out with her former employer via arbitration, not in court, a California federal judge has ruled. [Read full article »](#)

WAGE & HOUR

Belk Team Managers Get OK On Class OT Deal

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New Cases

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A Texas federal judge on Thursday greenlighted a deal that ends for an undisclosed sum — but pays the plaintiffs' attorneys \$1.9 million — a wage collective action alleging department store Belk Inc. shorted hundreds of workers by misclassifying them as overtime exempt. [Read full article »](#)

NJ FedEx Drivers Denied Cert. In Misclassification Suit

A New Jersey federal judge won't certify a proposed class of FedEx delivery drivers allegedly misclassified as independent contractors and subjected to unlawful wage deductions, finding the Garden State workers leading the suit haven't offered a feasible way to determine whether potential class members had the same experience. [Read full article »](#)

NONCOMPETES

Worker Wants Papa John's No-Poach Suits Consolidated

A former Papa John's employee asked the U.S. Judicial Panel on Multidistrict Litigation to consolidate her proposed antitrust class action with the two others currently filed against the pizza chain over no-poaching agreements barring hiring or recruitment between franchises. [Read full article »](#)

TRADE SECRETS

Fidelity Says Ex-VP Using Info He Stole To Aid Morgan Stanley

Fidelity Brokerage Services filed suit Wednesday in California federal court accusing one of its former vice presidents of stealing privileged client contact information that he is allegedly now using in his new job at rival Morgan Stanley to lure over customers. [Read full article »](#)

BACKGROUND CHECKS

CVS Unit's Doubled \$1.3M FCRA Deal 'Odd,' Judge Says

A California federal judge appeared puzzled Thursday by a CVS Health Corp. subsidiary's \$1.3 million Fair Credit Reporting Act deal, calling it an "odd case" and questioning why the settlement more than doubled after he booted an earlier proposal due to "peripheral" concerns about an excessive incentive payment. [Read full article »](#)

EXPERT ANALYSIS

Key Trade Secret Developments Of 2018: Part 1

This year brought significant developments in U.S. trade secret law, including further guidance on the Defend Trade Secrets Act and varied court interpretations of customer lists as trade secrets, say attorneys with Faegre Baker Daniels. [Read full article »](#)

Mass. Cos. With Tipped Employees Face New Wage Laws

As a result of new legislation that takes effect in January, Massachusetts companies with tipped employees should revisit how they calculate wages — or risk getting swept into the next onslaught of class actions, says Matt Horvitz of Goulston & Storrs PC. [Read full article »](#)

Calculating 1-Year Employment Requirement For L-1 Visas

U.S. Citizenship and Immigration Services recently issued a policy memo to clarify the one-year foreign employment requirement for L-1 visa holders. Miatrai Brown of Erickson Immigration Group discusses how it will affect petitions moving forward. [Read full article »](#)

LEXIS PRACTICE ADVISOR

Navigating E-Discovery In Employment Litigation: Part 1

Kim Leffert and Michael Downey of Mayer Brown LLP explain how to make the e-discovery process for employment litigation easier and more cost-effective by providing practical guidance on the key issues involved with handling electronically stored information. [Read full article »](#)

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Hogan Lovells
Holland & Knight
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Danfoss AS
Facebook
Faiveley Transport SA
FedEx Corp.
Financial Industry Regulatory
Authority Inc.
Finjan Holdings Inc.
Ford Motor Co.
GlaxoSmithKline

LEGAL INDUSTRY

Judge Raps Quinn Emanuel Trial Preparedness In Fraud Case

A Maryland federal judge gave Quinn Emanuel Urquhart & Sullivan LLP a benchslap on Tuesday, saying that nonpublic filings showed the firm had "failed properly to prepare for trial" on behalf of an Israeli national accused of a boiler-room-like scheme involving binary options. [Read full article »](#)

Judiciary Has 3-Week Lifeboat To Ride Out A Shutdown

If the federal government should shut down for the third time this year, the federal courts estimate that they can remain open for three weeks, sustained through a combination of court fees and other appropriations, a courts spokesperson told Law360 on Thursday. [Read full article »](#)

Wray Earned \$5.1M Since Leaving King & Spalding For FBI

FBI Director Christopher Wray earned \$5.1 million in compensation after leaving his former firm, King & Spalding LLP, according to a financial disclosure form submitted earlier this month and publicized on Thursday, which provided a rare peek into the global firm's senior-level compensation. [Read full article »](#)

Rep. Trey Gowdy To Rejoin Nelson Mullins Post-Politics

U.S. Rep. Trey Gowdy, R-S.C., will reportedly return to his former law firm, Nelson Mullins Riley & Scarborough LLP, after he leaves Congress at the end of this year. [Read full article »](#)

Atty's Widow Asks High Court To Look At Case Against GSK

The widow of a Reed Smith LLP partner who had been taking a GlaxoSmithKline antidepressant when he killed himself asked the U.S. Supreme Court on Wednesday to review the case against the drugmaker, which was initially held liable for the death until a Seventh Circuit appeals panel threw out the verdict. [Read full article »](#)

Posner, Boies File High Court Cert Bid In Wild Pro Se Suit

With Boies Schiller Flexner LLP Chair David Boies and retired Seventh Circuit Judge Richard Posner in his corner, a man claiming a conspiracy involving the FBI and Maryland federal judiciary, the latter of which he calls the "White Guerrilla Family," has petitioned the U.S. Supreme Court to hear his challenge to lower courts' handling of pro se litigants. [Read full article »](#)

Law360's Weekly Verdict: Legal Lions & Lambs

Gibson Dunn and Squire Patton Boggs became legal lions this week after helping ramen companies beat price-fixing claims, while Orrick Herrington was among the legal lambs after failing to upend a \$4.7 billion product liability verdict against Johnson & Johnson. [Read full article »](#)

In Case You Missed It: Law360's Hottest Stories Of 2018

For those who missed out, here's a look back at the articles that generated the most buzz on Law360 in 2018. [Read full article »](#)

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Employee Benefits and Executive Compensation Attorney

Bond, Schoeneck & King
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L&E Partner -Mid-sized NYC law firm

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Home Box Office Inc.

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Johnson & Johnson

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Mylan NV

Omnicare Inc.

Papa John's International Inc.

PennyMac Financial Services Inc.

Pfizer Inc.

QUALCOMM Inc.

Reed Elsevier

Rio Tinto PLC

Sierra Club

Sovos Compliance LLC

Spectrum Management Holding Co.

Tinder Inc.

UBS AG

Ultradent Products Inc.

Unum Group

Wabtec Corporate

Wells Fargo & Co.

GOVERNMENT AGENCIES

Administrative Appeals Office

Bureau of Citizenship and Immigration Services

California Labor and Workforce Development Agency

California Supreme Court

Equal Employment Opportunity Commission

Federal Bureau of Investigation

Federal Trade Commission

Florida State Senate

Food and Drug Administration

U.S. Department of Justice

U.S. Department of Labor

U.S. Office of Government Ethics

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From: [GovExec Breaking News](#)
To: [Ring, John](#)
Subject: Partial Government Shutdown Guaranteed, as Congress Calls it a Night
Date: Friday, December 21, 2018 8:44:08 PM

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GovExec Breaking News

December 21, 2018



[Partial Government Shutdown Guaranteed, as Congress Calls it a Night](#) // Erich Wagner

The third shutdown under the Trump administration will commence at midnight Friday, congressional leaders confirmed.

[Read full article »](#)

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With a growing number of agency apps running in the cloud and employees connecting remotely from mobile devices and laptops, there's increased demand for an alternative to the Trusted Internet Connection (TIC). Rather than relying on incumbent, network-centric technologies, agencies are using the Zscaler cloud service and its FedRAMP authorized zero trust solution to decouple application access from network access. [Privacy Policy](#).

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Subject: Shutdown prospects remain murky; last-minute bills to give feds extra pay
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GovExec Today

December 21, 2018



[House Approves Spending Bill With Wall Funding, Shutdown Prospects Remain Murky](#) //

Erich Wagner

Senate Democrats have vowed to block the measure, leaving little time for new negotiations.

[If You're Confused About Survivor Benefits, You're Not Alone](#) // Tammy Flanagan

A guide to annuity options.

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[The New Spectrum: a Survey of Mobile Connectivity in the Federal Workforce](#)

Mobile devices are having a transformative effect on the workforce at-large, as employees receive more freedom and flexibility to accomplish their work objectives in spite of geographical boundaries and location barriers. But are federal employees feeling the benefits yet? [Privacy Policy](#).

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[Despite Looming Freeze, Last-Minute Bills to Give Feds Extra Pay Gain Steam](#) // Eric Katz

Good news for furloughed workers and Secret Service agents could be on the horizon.

[It May Take A While For House Democrats To Catch Up With The Homeland Security Secretary](#) // Heather Timmons

Kirstjen Nielsen is filling her schedule with overseas travel, making it tough for Democrats to schedule testimony while on the job.

[A Research-Backed Reason Not To Worry About What Your Peers Think Of You](#) // Lila MacLellan

Can we ever really know what our colleagues think about us? A new study suggests we already do.

[Justice Hits Chinese Hackers For Attacking U.S. Navy, Agencies, Companies](#) // Patrick Tucker

Hackers with the Chinese government hit 45 targets in campaign going back years.

[Trump's Abrupt Syria Reversal Confounds His Own Administration, GOP Allies](#) // Katie Bo Williams

Hours later, White House officials had more questions than answers about the withdrawal.

[Senate Passes Bill to Make Government Data More Accessible](#) // Jack Corrigan

The legislation would require agencies to publish all nonsensitive information in a machine-readable format.

[Trump Administration Moves On Tougher Food Stamp Work Requirements](#) // Dave Nyczepir

The U.S. Department of Agriculture offered its proposal Thursday, the same day the president signed a bill that rejected expanded work mandates.

[DHS Turns to Existing GSA, NIH Contracts to \(Mostly\) Replace EAGLE](#) // Aaron Boyd

The department will use existing governmentwide acquisition contracts rather than recompile another EAGLE contract vehicle.

[Pennsylvania Pension Commission Flags Upwards of \\$1 Billion in Investment Costs for One Year](#) // Bill Lucia

The sum earned by investment managers from one pension fund exceeded employee contributions for the same period.

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GovExec Breaking News

December 21, 2018



[Still No Deal Imminent as Shutdown Appears Likely](#) // Eric Katz

Congress appeared headed for a shutdown Friday evening as lawmakers and the White House failed to reach an agreement with just hours until many federal agencies were set to close their doors.

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With a growing number of agency apps running in the cloud and employees connecting remotely from mobile devices and laptops, there's increased demand for an alternative to the Trusted Internet Connection (TIC). Rather than relying on incumbent, network-centric technologies, agencies are using the Zscaler cloud service and its FedRAMP authorized zero trust solution to decouple application access from network access. [Privacy Policy](#).

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Subject: Get Ready for a Shutdown "For a Very Long Time" Trump Warns
Date: Friday, December 21, 2018 9:21:09 AM

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GovExec Breaking News

December 21, 2018



[Get Ready for a Shutdown 'For a Very Long Time' Trump Warns](#) // Katherine McIntire Peters

What seemed unlikely a week ago appeared far more likely on Friday morning: a partial government shutdown that could last “for a very long time,” President Trump threatened in an early morning tweet.

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[The New Spectrum: a Survey of Mobile Connectivity in the Federal Workforce](#)

Mobile devices are having a transformative effect on the workforce at-large, as employees receive more freedom and flexibility to accomplish their work objectives in spite of geographical boundaries and location barriers. But are federal employees feeling the benefits yet? [Privacy Policy](#).

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From: [Morning Shift](#)
To: [Ring, John](#)
Subject: POLITICO's Morning Shift: Shutdown back on? — Migrants pushed back to Mexico — Trump cracks down on food stamps
Date: Friday, December 21, 2018 10:04:49 AM

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2018 Newsletter Logo: Morning Shift



12/21/2018 10:00 AM EDT

By IAN KULLGREN (ikullgren@politico.com; [@iankullgren](#))

With help from Ted Hesson

Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click

[here](#).

QUICK FIX

The House passed a spending bill Thursday night that includes \$5 billion for President Donald Trump's border wall, setting up a clash with the Senate and raising the likelihood of a government shutdown.

— **DHS said it will** require certain asylum seekers to remain in Mexico while their claims are processed.

— **USDA said it will** move to enforce more aggressively existing work requirements on food stamp recipients.

— **The Senate all but abandoned** efforts to confirm a slate of labor nominees before this Congress ends.

GOOD MORNING! It's Friday Dec. 21, and this is your last Morning Shift of 2018. We'll suspend publication Dec. 24-Jan 1 and return to your inbox on Jan. 2. Send tips, exclusives, and suggestions to rrainey@politico.com, thesson@politico.com, ikullgren@politico.com, and tnoah@politico.com. Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren), and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

SHUTDOWN BACK ON?: House Republicans pushed through a spending bill that includes \$5 billion for Trump's wall, hours after the president said he'd veto the Senate's "clean" continuing resolution.

"**House Republicans** believe their bill is a starting point for negotiations with the Senate, which unanimously passed a clean funding bill on Wednesday night and quickly left town," POLITICO's Sarah Ferris and John Bresnahan write. "But the House GOP proposal is D.O.A. in the Senate, where Democrats have vowed to reject any funding for the border wall. Government funding runs out at midnight Friday, meaning a partial government shutdown looks almost certain at this point.

A partial shutdown wouldn't affect the Labor Department, which has already had its funding approved, and nearly 90 percent of DHS employees are considered "exempt" and would continue to work in the event of a shutdown, according to the department's [shutdown contingency plan](#). But most wouldn't receive a paycheck until Congress passed a spending bill. A notable exception would be USCIS, which is funded almost entirely by user fees and therefore can mostly continue operations

with workers paid on time. Several agency programs [would be suspended](#), including E-Verify. More [here](#).

AT THE BORDER

MIGRANTS PUSHED BACK TO MEXICO: "The Trump administration will compel certain asylum-seekers to remain in Mexico during the course of their asylum hearings," POLITICO's Ted Hesson reports. DHS Secretary Kirstjen Nielsen announced the new plan on Thursday morning shortly before appearing before a House Judiciary Committee oversight hearing. The Mexican Foreign Ministry said the country will allow migrants with pending cases to remain on a temporary basis and apply for work permits.

The move is almost certain to prompt litigation. In this week alone, federal judges dealt legal setbacks to Trump's [asylum ban](#) and to a [separate policy](#) that restricts domestic violence as grounds for asylum. An internal planning document for a "remain in Mexico" pilot obtained by POLITICO earlier this month showed administration officials discussed a range of legal and logistical pitfalls around the policy, including how migrants would have access to counsel on the Mexican side of the border. More [here](#).

THE WHITE HOUSE

TRUMP ADMIN CRACKS DOWN ON FOOD STAMPS: The Agriculture Department on Thursday released a rule to more strictly enforce work requirements under the Supplemental Nutrition Assistance Program, POLITICO's Helena Bottemiller Evich and Catherine Boudreau report.

Under current law, able-bodied adults without dependents may not receive food stamps for longer than three months over a three year period unless they're working or enrolled in an education and training program for at least 80 hours a month. States, however, can waive the time limit when unemployment is high or when there aren't enough jobs available. The proposed rule would tighten the waiver criteria. More [here](#).

IN CONGRESS

NOMINATIONS DEAL FALLS APART: A deal to push through a slate of labor nominees appeared all but dead Thursday as lawmakers raced to avert a shutdown.

The obstacle is a standoff between Sens. [Patty Murray](#) (D-Wash.) and [Mike Lee](#) (R-Utah). Murray opposes fast-track confirmation of the labor nominees absent Chai Feldblum, a Democratic member of the Equal Employment Opportunity Commission whose term expires at the end of the year, and Mark Gaston Pearce, a Democrat who served on the National Labor Relations Board until this past August. Lee has dug in his heels on Feldblum, calling her "an [LGBT] activist intent on stamping out all opposition to her cause."

Murray "will continue her stance in the next Congress," an aide told POLITICO, signaling that talks had broken down. Asked whether Lee would budge, a Lee aide simply said: "No," adding that the discussion would be "booted" to next session. Sen. [Roy Blunt](#) (R-Mo.), vice chairman of the Senate Republican Conference, told Bloomberg that some labor nominees could still get through in a last-minute deal, though a Democratic aide said it's unlikely. More from POLITICO's Ian Kullgren [here](#).

GADE QUITs: Daniel Gade, a Republican EEOC nominee, told the National Law Journal on Thursday that he withdrew his name from consideration, citing the "political mess" in the confirmation process. (See previous item; Gade is among the nominees whose confirmation is blocked by the Murray-Lee standoff.) "I'm willing to serve, but the process of being confirmed should not be so painful that it causes good people to run away," Gade told the NLJ's Erin Mulvaney. "The EEOC is way too important to leave unfilled at the commissioner level. It's clear there isn't a path forward." Gade said he offered the White House a resignation letter in November but was told it wasn't necessary. More [here](#).

THE ECONOMY

GM: OHIO PLANT'S FATE LIES WITH UAW: General Motors, in a written statement Thursday to Reuters, said that whether a Lordstown, Ohio, plant slated for closure next year can be rescued will depend on negotiations with the UAW. The statement came in response to a Twitter exchange between Tesla CEO Elon Musk and Ohio Gov. John Kasich, who asked Musk to buy the plant (Musk had hinted that he might in an interview on 60 Minutes this month). "Thanks, will consider next year," Musk responded. More [here](#).

IMMIGRATION

SBA BLASTS H-1B LOTTERY PROPOSAL: The Small Business Administration's advocacy office on Thursday ripped a [proposed rule](#) to rework the H-1B lottery registration process. In [a letter](#) addressed to USCIS Director Francis Cissna, the office urged the agency to postpone the introduction of the new process, which would allow employers to pre-register for the lottery electronically. The office said the new lottery would increase uncertainty and "may just add another layer of bureaucracy to the already complicated process." (The SBA also noted the 30-day comment period for the proposed rule falls over the holiday season.)

6TH CIRCUIT: IRAQIS CAN BE DEPORTED: The 6th Circuit on Thursday sided with the Trump administration and ruled that a group of roughly 100 Iraqi nationals convicted of crimes can be deported, Mica Rosenberg and Dan Levine [report](#) in Reuters. In a split decision, a three-judge panel vacated a lower court ruling that had blocked the Iraqis from being removed. For years, Iraq did not accept Iraqi deportees, but its stance reversed after Trump took office. Read the opinion [here](#).

LABOR BOARD

ROBB CRITICIZES JOINT EMPLOYER PROPOSAL: The NLRB's top attorney this week criticized the board's pending joint employer proposal as insufficiently pro-business, Bloomberg Law's Hassan Kanu and Robert Iafolla report.

The current proposal would categorize a company as a joint employer — and therefore liable for labor violations committed by franchisees and contractors — if it has "direct and immediate" control over workers. "Under Robb's recommendations," Kanu and Iafolla write, "a company found to be a joint employer wouldn't have to bargain with a union unless it controls 'all listed essential terms and conditions of employment.'" More [here](#).

UNIONS

LA TIMES UNION REACHES DIVERSITY AGREEMENT: The Los Angeles Times Union struck a deal with management to improve diversity in its newsroom. "The policy, once ratified, will require Times managers, when possible, to interview at least two candidates who are women or members of traditionally-underrepresented groups — including women, Black, Latino, Asian American, Native and LGBTQ journalists," the union said in a statement. More [here](#).

ON THE CALENDAR

There are no calendar events today.

COFFEE BREAK:

— "Planned Parenthood Is Accused of Mistreating Pregnant Employees," from the [New York Times](#)

— "Wells Fargo shifts many jobs overseas following layoffs in the US, documents show," from the [Charlotte Observer](#)

— "Justice Department Investigating Migrant Shelter Provider," from the [New York Times](#)

— "The Shrinking Middle Class: By the Numbers," from [Fortune](#)

— "L.A. teachers set to strike Jan. 10. Union says it has no plans for more negotiating," from the [Los Angeles Times](#)

— "The Onion Goes Union: Humorists Ratify First Contract With WGA East," from [Deadline.com](#)

— "A floral foam company is paying its workers average holiday bonuses of \$14,000," from the [Washington Post](#)

THAT'S ALL FOR MORNING SHIFT — SEE YOU NEXT YEAR!

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Subject: White House Digs In on Wall Demand, Aims for "Painless" Shutdown
Date: Saturday, December 22, 2018 3:23:08 PM

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GovExec Breaking News

December 22, 2018



[White House Digs In on Wall Demand, Aims for 'Painless' Shutdown](#) // Erich Wagner

The White House on Saturday afternoon showed no signs of budging from its demands for \$5 billion in funding for President Trump's proposed wall along the U.S.-Mexico border.

[Read full article »](#)

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With a growing number of agency apps running in the cloud and employees connecting remotely from mobile devices and laptops, there's increased demand for an alternative to the Trusted Internet Connection (TIC). Rather than relying on incumbent, network-centric technologies, agencies are using the Zscaler cloud service and its FedRAMP authorized zero trust solution to decouple application access from network access. [Privacy Policy](#).

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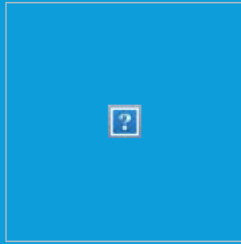
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From: [Bloomberg Law Daily Labor Report](#)
To: [Ring, John](#)
Subject: First Move: Labor Agencies Look Ahead • Discrimination Gets Focus
Date: Monday, December 24, 2018 7:09:59 AM



What you need to know to start your day.

Labor Agencies Look Ahead • Discrimination Gets Focus



By [Patricio Chile](#)

LABOR NOMINEES, AGENCIES LOOK AHEAD

Looking for the latest on Trump Labor nominees and the government funding fight? Punch in with Chris Opfer and Jaclyn Diaz as they explore what's next for the Labor Department, National Labor Relations Board, and Equal Employment Opportunity Commission.

This week's column also features insight from Seyfarth Shaw's Randy Johnson on what Democratic control of the House will mean for leaders of those agencies. The short answer: They can expect to be spending more time on Capitol Hill in the new year.

FOCUSING ON LITIGATION, SETTLEMENTS IN 2019

What's [in store long-term](#) for the EEOC and the DOL's federal contractor enforcement agency? They plan to use the momentum they gained this year to focus on litigation and different kinds of conciliation agreements into 2019.



Protesters during a #MeToo march in Hollywood, Calif., Nov. 12, 2017.
MARK RALSTON/AFP/Getty Images

For the EEOC, that means keeping an eye on #MeToo sexual harassment allegations, while branching out to focus on other types of discrimination, such as bias against older or disabled workers. The DOL's Office of Federal Contract Compliance Programs will ramp up its new employer-friendly policies, and apparently already has a "robust pipeline" of bias cases heading toward settlement in 2019.

OTHER STORIES WE'RE WATCHING

- The **partial government shutdown** took effect midnight Friday and looks [likely to stretch](#) out to at least Thursday. [Federal courts will stay open](#), as will the NLRB and Labor Department, which saw their funding legislation signed in September. But the shutdown could [snag the EEOC's momentum](#)

as the anti-discrimination office temporarily will operate with just five percent of its usual workforce.

- And speaking of the EEOC's litigation momentum, **UPS** will pay \$4.9 million and revise its **religious accommodation** process to resolve agency claims that the package delivery giant refused to hire applicants who wore beards and long hair for religious reasons. Patrick Dorrian has [the story](#).
- **Union membership** for police officers is on the rise even as some individual police departments face hundreds of vacancies, Paige Smith [reports](#). The **Fraternal Order of Police** has the highest union membership in almost a decade, with 341,946 members, an increase of almost 20,000 members since spring 2018.
- The **EEOC** and the **Justice Department's Civil Rights Division** will collaborate to "address workplace harassment" and "ensure the efficient use of resources and a consistent enforcement strategy," according to a **Memorandum of Understanding** released Dec. 21. Read Paige Smith's [story here](#).
- Several **Alaris Health nursing homes** in New Jersey violated labor law when they refused to allow some workers who participated in a 3-day strike back to work, the **NLRB** said in [three separate orders](#). Hassan Kanu will have the story later today.
- Workers at several **L.A. area hotels** will bring in **\$25 an hour** by 2023, UNITE HERE local 11 tells Paige Smith. That's one of the highlights for employees who ratified a deal that was [reached last week](#) with several hotels in and around the City of Angels.
- Subscribers to this news service will not receive First Move on Dec. 25. The next First Move will arrive on Dec. 26.

AROUND THE WEB

- U.S. and Canadian unions launched campaigns against General Motors over the **automaker's** plans to shutter factories and put thousands of workers out of jobs, [Detroit Free Press reports](#).
- Thousands of Sears employees are working their last holiday season for the troubled retailer and dealing with a rush of customers lured by deep price cuts, [the Wall Street Journal reports](#).
- The Cheyenne, Wyo., city council unanimously approved across-the-board **bonuses** for city workers, putting an extra \$464 in full-timers' pockets at the end of the year, [the Wyoming Tribune reports](#).

- **Celebrity chef** Jose Andres said his Washington, D.C., restaurants would provide free lunch to federal workers in the event of a government **shutdown**, [Fox 5 DC reports](#).

For all of today's Bloomberg Law headlines, visit [Daily Labor Report](#)



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DAILY LABOR REPORT®

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TOP STORIES

[New Director Named for Federal Contractor Watchdog Agency](#)

By Jaclyn Diaz

A new director has been appointed to the Labor Department's watchdog agency for federal contractors and his name is familiar.

[Minimum Wages Set to Rise in Several States, Cities](#)

By Jaclyn Diaz

Many workers across the country will start the new year off with pay raises, thanks to state-level legislation or ballot initiatives that establish higher minimum wages.

[Cybersecurity Boost, Postal Rescue Doable as House Panel Shifts](#)

By Louis C. LaBrecque

Democrats and Republicans on the House Oversight and Government Reform Committee won't agree on much in the 116th Congress beginning in January, but there could be progress on beefing up the government's cybersecurity workforce and rescuing the U.S. Postal Service.

DISCRIMINATION

[Morgan Stanley IT Executive Says Boss Favored Indian Workers \(1\)](#)

By Patrick Dorrian

A white, "half-Korean" Morgan Stanley vice president was mistreated by an executive director because he isn't of Indian descent, a federal lawsuit filed in Manhattan charges.

[Machine Learning Deployed to Help EEOC Predict Discrimination](#)

By Paige Smith

In the not so distant future, civil rights agencies will be predicting where the next instance of workplace discrimination could crop up, with the help of machine learning.

WAGE & HOUR

[Too Many Pages Costs U.S. Soccer in Bid to Toss Hope Solo Suit](#)

By Porter Wells

The U.S. Soccer Federation's motion to dismiss soccer star Hope Solo's pay discrimination case was too lengthy to pass muster with the federal judge assigned to the case.

HARASSMENT & RETALIATION

[Black Nashville Water Worker Can't Prove Retaliation: 6th Cir.](#)

By Patrick Dorrian

A black public water services worker in Tennessee lacked evidence his employer retaliated against him by, years after he participated in a race discrimination class action, hiring someone else for a job he wanted, a federal appeals court ruled.

[N.Y. Town Supervisor's Retaliation, Disability Bias Suit Revived](#)

By Patrick Dorrian

A former buildings supervisor in East Fishkill, N.Y., can pursue claims he lost his job because he complained about age discrimination, a federal appeals court said.

[Black Federal Reserve Manager Gets Trial on Retaliation Claim](#)

By Patrick Dorrian

A trial is necessary to determine whether the Federal Reserve Board of Governors stripped a black data manager of some of her duties because she complained about race and gender bias, a federal judge ruled.

STATE & LOCAL LAWS

[Delaware Catches #MeToo Wave as Harassment Law Takes Effect](#)

By Leslie A. Pappas

Delaware employers may need to update their sexual harassment prevention training under a new law that takes effect Jan. 1.

WHISTLEBLOWERS

[Saturna Capital Bests Purported Whistleblower's New Trial Bid](#)

By Jon Steingart

A trial judge shouldn't have excluded certain evidence in a securities whistleblower trial, the U.S. Court of Appeals for the Ninth Circuit held.

LABOR RELATIONS

[Unions at Work: LA Teachers Dig in, Iowa Fight Over Wages](#)

By Louis C. LaBrecque

Keep up-to-date with our weekly roundup of union initiatives, bargaining

developments, leadership changes, and other labor news.

ALSO IN THE NEWS

[Medtronic Can Hold Sales Manager to Noncompete Agreement](#)

By Kyle Jahner

Lifting an injunction blocking a medical supply company's ex-employee from working for a competitor would likely cause irreparable harm, a Minnesota appeals court ruled.

[New Work Suits: TIAA Accused of Age Bias by Sacked 'Old-Timer'](#)

By Cynthia Harasty

TIAA is facing an age bias lawsuit filed by a former employee who says he was unlawfully fired and replaced by someone substantially younger and less qualified.

[Shutdown Cuts Christmas Vacation Short for Federal Employees](#)

By Laura Davison

The government shutdown doesn't mean an extended Christmas break for about 400,000 federal employees deemed essential. Rather, it means those workers need to be back on the job Dec. 26—with no exceptions.

SAFETY & HEALTH

[2019 Outlook: Job Violence, Heat Stress Are Hot Safety Issues](#)

By Bruce Rolfsen, Sam Pearson, and Fatima Hussein

Protecting workers from violence and preventing heat stress are issues that Congress, the courts, and federal regulators are likely to take up in 2019, officials are telling Bloomberg Law.

LATEST CASES

[Case: Individual Employment Rights/Trade Secrets \(N.D. Ill.\)](#)

Collective Bias may proceed with its claim that its former senior director of business development improperly forwarded its confidential information, including business development plans, pricing lists, budget templates, client lists, and research reports, to her personal email account a month before she quit to work for a competing influencer marketing company. Collective Bias may show that it spent years and millions of dollars developing the information, that it took several measures to maintain the secrecy of its information, and that the director used the information to solicit its customers after she left. The case is *Inmar, Inc. v. Vargas*, 2018 BL 476829, N.D. Ill., No. 18-cv-2306, 12/21/18.

[Case: Disability Discrimination/Discharge \(2d Cir.\)](#)

A former buildings and grounds supervisor for the city of East Fishkill, New York, may go to trial on his claim that the city discriminated against his brain injury by eliminating his position and preventing him from rehire, because the resolution eliminating his position appeared designed to target him specifically, and the city's only subsequent job offer was a position that it may have believed he was incapable of performing due to his disability. The case is *Kopchik v. Town of East Fishkill*, 2018 BL 477482, 2d Cir., 18-1182-cv, unpublished 12/26/18.

[Case: Wage & Hour/Collective Certification \(E.D.N.Y.\)](#)

Delivery drivers, chefs, and porters for two related New York restaurants may move forward collectively with their claim for unpaid minimum wages and overtime, because one employee testified that he and at least five others worked similar hours and received a flat \$360 weekly salary. The case is *Alberto v. Pollo*, 2018 BL 477228, E.D.N.Y., 18-CV-4762 (BMC), 12/25/18.

[Case: Wage & Hour/Employee Status \(N.J. Super. Ct. App. Div.\)](#)

An executive officer of Globecon Group was an employee entitled to bring a claim for unpaid wages under New Jersey wage law, despite the company's contention that he should be considered an 'employer,' because the law doesn't explicitly prohibit officers from bringing wage claims, and he put forth evidence that he reported to the owner of the company. The case is *Vaughan*

v. Siegel, 2018 BL 476381, N.J. Super. Ct. App. Div., A-4681-16T2, unpublished 12/24/18.

[Case: FMLA/Retaliation \(N.D. Ohio\)](#)

A corrections officer may proceed with his claim that the Ohio Department of Rehabilitation and Correction forced him to resign in retaliation for taking leave under the Family and Medical Leave Act. The Department's actions, including switching the officer to the overnight shift, could show that it created a hostile work environment for him in retaliation for taking FMLA leave, the court said. The case is Nolen v. Ohio Dep't of Rehab. & Corr., 2018 BL 475418, N.D. Ohio, No. 3:17 CV 182, 12/21/18.

[Case: Wage & Hour/Collective Certification \(D. Ariz.\)](#)

Help desk technicians for an IT support company may move forward collectively with their claim for unpaid on-call time based on their misclassification as overtime-exempt. They gave enough information to support that their claims are similar enough to argue them together, because, among other things, they said that the company had a policy requiring each technician to rotate working on-call shifts beyond their usual 40-hour workweek. The case is Scales v. Info. Strategy Design Inc., 2018 BL 477100, D. Ariz., CV-18-00087-PHX-DLR, 12/21/18.

[Case: FMLA/Retaliation \(E.D. Pa.\)](#)

A table games dealer may proceed with his claim that a casino and racetrack in Pennsylvania fired him for taking leave under the Family and Medical Leave Act. Questions remain, including whether or not his FMLA leave was a factor in the firing decision, the court said. The case is Worthington v. Chester Downs & Marina, LLC, 2018 BL 476744, E.D. Pa., No. 17-1360, 12/21/18.

[Case: Discrimination/Retaliation \(D.D.C.\)](#)

A black manager at the Board of Governors of the Federal Reserve System can go to trial on her claims that she was stripped of some of her job responsibilities in retaliation for her internal complaints alleging race discrimination and sex discrimination. Her supervisor took away an assignment

from her within one month of her first complaint, and such a short time period between the change in employment status and the complaint is sufficient to show causation. The case is *Mitchell v. Powell*, 2018 BL 476384, D.D.C., 17-cv-00182 (APM), 12/24/18.

[Case: Discrimination/Statute of Limitations \(Minn. Ct. App.\)](#)

A Minnesota state appeals court sends back to a trial court a female sprinkler fitter's suit alleging sex discrimination and retaliation against Nasseff Mechanical Contractors after the trial court dismissed her claims for not filing suit within 45 days of receiving notification that the Minnesota Department of Human Rights lacked jurisdiction over her administrative charge. It's not clear if the letter that she was issued would be considered a dismissal sufficient to trigger the 45-day period under Minnesota law, and the trial court must make additional findings. The case is *Brinkman v. Nasseff Mech. Contractors, Inc.*, 2018 BL 476437, Minn. Ct. App., A18-0089, 12/24/18.

[Case: Labor Relations/Public Employees \(Ohio\)](#)

A Columbus, Ohio police officer waited too long to file an unfair-labor-practice charge with the state's employee relations board, after the police department and his union told a federal court that they had settled the union's grievance over his firing, which deprived him of the right to have his grievance go to arbitration. The officer argued that he complied with state law by filing his charge within 90 days after the union produced a copy of the signed settlement agreement, but the Ohio Supreme Court affirmed a lower court ruling that any unfair labor practice happened earlier when the federal court was first informed of the settlement. The case is *State ex rel. Murray v. State Emp't Relations Bd.*, 2018 BL 473900, Ohio, 2017-0550, 12/21/18.

[Case: Discrimination/Class Certification \(S.D. Cal.\)](#)

A California federal court won't give class certification to a group of African refugees who worked for federal defense contractors and argued that they were discriminated against based on their race, national origin, and religion. Though they could show that they suffered similar injuries, such as being required to perform janitorial duties and being denied adequate water while working, the range of time for the proposed class—2010 to 2017—includes a

period of time that is beyond the four-year statute of limitations period contained in the federal civil rights law at issue. The case is In re Abikar, 2018 BL 475654, S.D. Cal., No. 3:17-cv-01036-GPC-AGS, 12/21/18.



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TOP STORIES

[Shutdown Halts Federal Workers From Challenging HR Actions](#)

By Louis C. LaBrecque and Hassan A. Kanu

The board that hears federal workers' personnel disputes is currently shut down, but it will face even bigger operational challenges in the coming months when it reopens.

[Government Employee Union Mulls Lawsuit Over Shutdown](#)

By Andrew Wallender

A union representing government employees is considering suing the federal government for making employees work without pay during the partial government shutdown, Bloomberg Law has learned.

[2019 Outlook: Business to Push Back Against Immigration Policies](#)

By Laura D. Francis

Federal agencies are likely to continue to tighten the screws on the legal immigration system next year, while Congress and the courts focus primarily on high-profile issues such as border security, asylum seekers, and dreamers.

DISCRIMINATION

[Black Hospira HR Employee to Get Race Bias, Retaliation Trial](#)

By Patrick Dorrian

Hospira Inc. can't avoid a trial on a former human resources employee's allegations that she was fired because she is black and she complained about racist comments and treatment directed at her and other workers, a federal judge ruled.

[Whirlpool Accused of Age, Race Bias in New Lawsuit \(1\)](#)

By Porter Wells

Whirlpool Corp. has been accused of discriminating and retaliating against an older black executive after she expressed worry that her age had come up while talking about her promotion track.

[Security Screener's Bias Lawsuit Against TSA Partially Grounded](#)

By Brian Flood

A former airport security screener's discrimination lawsuit against the Transportation Security Administration was partially dismissed Dec. 26 by the U.S. District Court for the District of Hawaii.

WAGE & HOUR

[Knights of Columbus Agent Sues Over Misclassification](#)

By Porter Wells

Catholic fraternal organization Knights of Columbus is accused of misclassifying hundreds of its insurance agents as independent contractors to avoid repaying business expenses in violation of California law.

HARASSMENT & RETALIATION

[Female Sales Worker Can't Prove Harassment, Bias, Retaliation](#)

By Patrick Dorrian

An Illinois seller of concession products and equipment properly won judgment on a female sale representative's sexual harassment, sex discrimination, and job retaliation claims, the U.S. Court of Appeals for the Seventh Circuit ruled.

[Orkin Can't Exterminate Worker's \\$3.7M Job Retaliation Award](#)

By Patrick Dorrian

A former route manager with Orkin LLC can keep the \$3.7 million he was awarded after a jury found he wasn't rehired because he had filed a discrimination complaint over his discharge, a state appeals court in Missouri ruled.

[United Airlines Must Defend False Claims Act Retaliation Suit](#)

By Porter Wells

United Airlines Inc. will have to face claims that it retaliated against an aviation technician who expressed concerns that the company was mishandling U.S. Air Force aircraft repairs.

STATE & LOCAL LAWS

[States of Work: Teachers Lose Protections; Noncompete Bills on Tap](#)

By Phil Kushin

Dive into the "States of Work" weekly roundup of state and local labor and employment developments. Teachers in two troubled Arkansas school districts lost job protections, while looking ahead to the new year, a couple of states may add restrictions on noncompete clauses, Colorado will consider a pay equity bill, and some minimum wage increases are on tap.

IMMIGRATION

[Kraft, L-3, Immigration Cases Snagged by Shutdown](#)

By Jon Steingart

Upcoming filing deadlines in a range of cases should be put on hold because of the partial government shutdown, lawyers for affected agencies said Dec. 26.

[Two Towns Forged an Unlikely Bond. Now, ICE Is Severing the Connection](#)

By Monte Reel

On the blacktop four-lane, a good mile or two from the edge of town, Dave Heaton spotted a “Now Hiring” sign. Those two words didn’t attract much attention anymore.

HEALTH CARE & BENEFITS

[Justices Want Response to Alaska Airline's Family Leave Argument](#)

By Jon Steingart

The Supreme Court wants a response to Alaska Airlines Inc.'s argument that it should review an appeals court ruling in favor of a flight attendant who wanted to use vacation leave to care for her sick son.

SAFETY & HEALTH

[BNSF Engineer Loses Injury Suit From 'Bottomed Out' Train](#)

By Patrick Dorrian

A locomotive engineer can't hold BNSF Railway Co. liable for the leg injury he suffered when the train he was riding on hit rough track and "bottomed out," the U.S. Court of Appeals for the Tenth Circuit ruled.

ALSO IN THE NEWS

[National Monuments Stay Open With Help From States, Other Donors](#)

By Genevieve Douglas and Louis C. LaBrecque

State and local governments are stepping in to keep national monuments open across the country during the government shutdown so tourists' holiday plans aren't sidelined.

[U.S. Consumer Confidence Falls as Job Expectations Plunge](#)

By Jeff Kearns and Shobhana Chandra

U.S. consumer confidence slumped in December to the lowest since July as a gauge of labor market expectations fell by the most in 41 years, the latest sign Americans are growing less optimistic as stock markets gyrate and the expansion moderates.

[Jobless Claims Fall to 216,000, Showing Tight U.S. Labor Market](#)

By Shobhana Chandra

U.S. filings for unemployment benefits decreased for the third time in four weeks, hovering near an almost five-decade low that reflects a robust job market.

LATEST CASES

[Case: Labor Relations/Union Officials \(Ariz. App. Div. 1\)](#)

The founder and former president of an Arizona union representing emergency professionals isn't entitled to reimbursement for expenses he says he incurred on the union's behalf before losing a union election ordered by a federal court in 2014, an Arizona appeals court ruled. The union founder said that the union's members and executive board were contractually obligated to reimburse his union-related financial losses, and that his work resulted in union members being awarded over \$1,000,000 in back pay by the National Labor Relations Board. However, the court found that the union official hadn't offered evidence of such a contract with the union. The case is *Barkley v. Indep. Certified Emergency Prof'ls of Ariz.*, 2018 BL 479106, Ariz. Ct. App., Div. 1, 1 CA-CV 17-0772, unpublished 12/27/18.

[Case: Discrimination/Sexual Harassment \(7th Cir.\)](#)

A female sales representative for Fare Foods Corporation in Illinois was properly denied a trial on her claim that she was exposed to a sexually hostile work environment, even though her co-workers used crude and offensive nicknames, discussed a male co-worker's sexual activities, and that male co-worker made improper advances towards her while they were on an overnight sales trip. None of the nicknames or comments were directed towards her, the discussions were infrequent, and she testified that she always felt in control of the business trip situation, the court said. The case is *Swyear v. Fare Foods Corp.*, 2018 BL 478065, 7th Cir., No. 18-2108, 12/26/18.

[Case: Discrimination/Demotion \(M.D. Ga.\)](#)

A fired former store associate couldn't show that Aldi Food Market demoted her because of her race rather than for her failure to follow directions in regard to the company's policy on clocking out of shifts. Though she alleged that her supervisor made a racist comment to her when she said "why don't you go put your monkey suit on," the associate couldn't show that the comments were linked to her demotion. The case is *Walker v. Aldi Food Mkt. Inc.*, M.D. Ga., 5:17-CV-3 (MTT), 12/27/18.

[Case: Disability Discrimination/Jury Instructions \(Mo. App.W.D.\)](#)

Orkin didn't show that a jury's finding that it declined to rehire a pest control employee in retaliation for his filing of a disability discrimination claim was based on improper instructions. The jury wasn't required to find that the employee made his original claim based on a reasonable belief of discrimination, because his retaliation claim was based on his filing of the claim rather than his opposition to the discriminatory conduct. The case is *Gentry v. Orkin LLC*, 2018 BL 478289, Mo. Ct. App. W.D., No. DOCKET NUMBER WD81069, 12/26/18.

[Case: Discrimination/Statute of Limitations \(8th Cir.\)](#)

A former employee for the Arkansas Department of Finance and Administration can't proceed on her federal civil rights claims, because she didn't timely file suit under either of the two different federal statutes under which she brought her claims. One of the statutes required her to file suit within

90 days of receiving her right-to-sue letter from the EEOC and the other required her to file suit within four years of her firing, and she did neither. The case is *Zimmerman v. Ark. Dep't of Fin. & Admin.*, 2018 BL 479051, 8th Cir., 18-1443, unpublished 12/27/18.

[Case: Discrimination/Discharge \(W.D. Wash.\)](#)

A black former employee for FedEx can't proceed on his claim that race discrimination was the real reason he was fired, because his allegations suggested that he was fired because of his request for time to deal with a swollen ankle, not because of his race. The case is *Mayes v. FedEx Corp. Serv., Inc.*, 2018 BL 478319, W.D. Wash., No. C18-1816RSM, 12/26/18.

[Case: Discrimination/Retaliation \(D. Haw.\)](#)

A fired transportation security screener may proceed with his claim that the Transportation Security Administration retaliated against him for complaining about Title VII discrimination, because the Aviation and Transportation Security Act doesn't preempt Title VII claims by TSA security screeners, the court said. The case is *Botelho v. Transp. Sec. Admin.*, 2018 BL 478327, D. Haw., CIV. NO. 18-00032 ACK, 12/26/18.

[Case: Discrimination/Discharge \(N.D. Ill.\)](#)

A black Hospira, Inc. employee can go to trial on a claim that she was fired because of race discrimination. The company argued that she wasn't meeting its expectations, but she received several positive performance reviews, pointed to several race related comments by the company's CIO and others, and the court said that there was enough evidence to raise doubt as to why the company eliminated her position and didn't consider her for a new position or other open roles. The case is *Brownlee v. Hospira, Inc.*, N.D. Ill., 15-cv-05358, 12/26/18

[Case: Discrimination/Individual Liability \(E.D. La.\)](#)

A former supermarket employee can't proceed on her federal civil rights claim against the company's sole shareholder, because individual employees of a company can't be liable under the statute at issue, and even if the shareholder isn't considered an employee, the statute doesn't allow for an action against

both an employer and its agent in an official capacity. The case is Patz v. Sureway Supermarket, E.D. La., 17-3465 SECTION: "E" (1), 12/26/18.

[Case: Discrimination/Exhaustion of Administrative Remedies \(E.D. La.\)](#)

A former bus driver and painter for Apache Industrial Services in Louisiana can't proceed on her age discrimination claims, because even though she alleged that she filed three EEOC charges, she made no mention that she claimed age discrimination in any of them, and her statement that she was 40 years old at the time she filed her second charge didn't give sufficient notice to the company that she was alleging discrimination because of her age. The case is Dunn v. Apache Indus. Servs., Inc., 2018 BL 478230, E.D. La., 17-12777 SECTION: "B"(2), 12/24/18.

[Case: Discrimination/Retaliation \(6th Cir.\)](#)

An employee of the Metropolitan Government of Nashville and Davidson County, Tennessee didn't show that he was denied a promotion in retaliation for filing a lawsuit alleging that metro preselected white candidates for job openings, a court said. He didn't apply for a previous position and was aware that metro only considered unsuccessful candidates for that position when it made its promotion decision, and the court said that the employee didn't fit the profile for the type of candidate that metro wanted, because he didn't have any engineering expertise. The case is Grant v. Metro. Gov't of Nashville, 6th Cir., 18-5392, 12/26/18

[Case: Individual Employment Rights/Contracts \(7th Cir.\)](#)

An outside sales representative can't proceed with her claim that Fare Foods Corp. in Du Quoin, Illinois breached her employment agreement when it reassigned her to an inside sales position, didn't give her a company credit card, and took her company car. The representative didn't receive a lower salary and her duties remained the same after the alleged reassignment, and she can't show that she was ever forbidden from using the company car, a court said. The case is Swyear v. Fare Foods Corp., 2018 BL 478065, 7th Cir., No. 18-2108, 12/26/18.

[Case: Individual Employment Rights/False Claims Act \(4th Cir.\)](#)

A lead aviation maintenance technician for United Airlines may proceed with his whistle-blower claim that he was fired in retaliation for reporting numerous aircraft maintenance violations to several managers. The technician reasonably believed that United was engaging in illegal and fraudulent activities, he took steps—making reports in person and in writing—to stop the illegal activity, he may show that his managers knew about his concerns, and he was fired within two months of his last report. The case is *United States ex rel. Grant v. United Airlines Inc.*, 2018 BL 477798, 4th Cir., 17-2151, 12/26/18.



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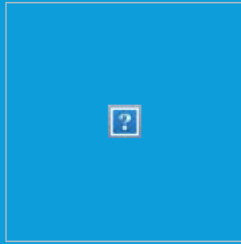
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Date: Thursday, December 27, 2018 7:09:26 AM



What you need to know to start your day.

Business Pushes on Immigration • EEOC Deploys Machine Learning



By [Patricio Chile](#)

BUSINESS COMMUNITY MAY PUSH BACK ON IMMIGRATION

Federal agencies are likely to continue to tighten the screws on the legal immigration system next year, while Congress and the courts focus on border security, asylum seekers, and dreamers, Laura Francis [reports](#).

But 2019 also could be the year that the business community starts fighting back against shifts in policy from the U.S. Citizenship and Immigration Services by filing lawsuits, one immigration observer told Laura for her 2019 immigration policy Outlook.

MACHINE LEARNING DEPLOYED IN DISCRIMINATION FIGHT

Machine learning may help civil-rights agencies predict who could face workplace discrimination. Samuel Christopher Haffer, the first chief data officer hired by the Equal Employment Opportunity Commission, said his goal is to create a “distant early warning system,” examining things like “intersectionality,” or groups of similar qualities like race, gender, or ethnicity.



A student looks at lines of code in the programming language Java.
SeongJoon Cho/Bloomberg via Getty Images

Paige Smith [reports today](#) that machine learning, or the algorithmic study of past experiences to optimize, or predict, future experiences, will have a lot to do with that. This could mean the EEOC would be able to flag a particular group of people in a specific industry who would be susceptible to discrimination.

OTHER STORIES WE'RE WATCHING

- Teachers in two troubled Arkansas school districts lost job protections, a couple of states may add restrictions on **noncompete clauses**, and some **minimum wage** increases are on tap. Dive into this week's "States of Work" weekly roundup of state and local labor and employment developments later today.
- United Airlines will have to face claims that it retaliated against an **aviation**

technician who expressed concerns that the company was mishandling U.S. Air Force aircraft repairs, Porter Wells [reports](#).

- Upcoming filing deadlines in a range of cases should be put on hold because of the partial **government shutdown**, lawyers for affected agencies said. Jon Steingart has [the story](#).
- The **Employment and Training Administration** releases its weekly jobless claims report at 8:30 a.m.
- The **Conference Board** issues its December consumer confidence index at 10 a.m.

AROUND THE WEB

- A **Massachusetts** senator plans to introduce legislation next month that would prevent workers from losing their jobs solely for consuming **marijuana** on their own time, [the Boston Globe reports](#).
- **Bay Area** workers with high school diplomas have lower unemployment rates than those with bachelor's degrees or higher, a trend observers say could be the result of lower-wage workers fleeing the region's skyrocketing housing prices and cost of living, [The Mercury News reports](#).
- The **Occupational Safety and Health Administration** fined XPO Logistics nearly \$13,000 for a deadly workplace accident in June, [WKBW Buffalo reports](#).
- New data show that as the labor market has tightened, women have been moving into traditionally **male-dominated jobs**, [the Seattle Times reports](#).

For all of today's Bloomberg Law headlines, visit [Daily Labor Report](#)



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To: [Ring, John](#)
Subject: Signs Point to Extended Shutdown With No Deal Emerging
Date: Thursday, December 27, 2018 4:48:10 PM

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GovExec Breaking News

December 27, 2018



[Signs Point to Extended Shutdown With No Deal Emerging](#) // Eric Katz

Congressional negotiators and the White House remained at a standstill during the sixth day of a partial government shutdown that has sent home hundreds of thousands of federal employees without the promise of retroactive pay.

[Read full article »](#)

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[Mission Possible: Protecting Federal Users Anytime Anywhere](#)

With a growing number of agency apps running in the cloud and employees connecting remotely from mobile devices and laptops, there's increased demand for an alternative to the Trusted Internet Connection (TIC). Rather than relying on incumbent, network-centric technologies, agencies are using the Zscaler cloud service and its FedRAMP authorized zero trust solution to decouple application access from network access. [Privacy Policy](#).

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TOP STORIES

[Democrats Prepare to Haul These Trump Officials Into Hearings](#)

By Chris Opfer, Jon Reid, Madison Alder and Dean Scott

Democrats want to chat with various Trump administration officials after retaking control of the House.

[Controversial NLRB Joint Employer Test Upheld by D.C. Circuit](#)

By Jon Steingart

The National Labor Relations Board acted properly in 2015 when it adopted a more expansive test for determining when companies in franchise, staffing, and other relationships should be considered joint employers for liability purposes, a federal appeals court held Dec. 28.

[Union Failed to Say It Would Play by Picketing Rules: NLRB](#)

By Robert Iafolla

An electricians' union failed to say it would follow existing legal rules when it told Las Vegas Convention Center's management company that it planned to picket one of the many companies that operate out of that facility, a divided National Labor Relations Board ruled.

[Trump Decision on Federal Pay Awaited as Dec. 31 Deadline Looms](#)

By Louis C. LaBrecque

President Donald Trump needs to decide soon on what kind of pay increase federal employees should get in January.

DISCRIMINATION

[Worker With Esophageal Condition Can Pursue Some Bias Claims](#)

By Patrick Dorrian

Bucks County, Pa., doesn't have to face a former groundskeeper's allegations that it failed to accommodate his difficulties digesting and regurgitating food and related issues, a federal judge ruled.

[Defense Dept. Agrees to Pause Service Members' HIV Bias Suit](#)

By Jon Steingart

The Defense Department agreed to process two former service members living with HIV through a fitness for duty evaluation.

[BNSF to Face Trial on Bias Claim by Trainman With Parkinson's](#)

By Patrick Dorrian

A jury must decide whether BNSF Railway Co. acted reasonably in determining that a veteran trainman with Parkinson's disease couldn't continue to perform his job safely, a divided U.S. Court of Appeals for the Fifth Circuit ruled.

[Verizon Accused of Not Rehiring Consultant Due to FMLA Leave](#)

By Patrick Dorrian

Verizon refused to rehire a former long-term employee because of her history of taking disability-related medical leave during her prior stint with the company, a lawsuit filed in Maryland federal court charges.

WAGE & HOUR

[Driver's OT Eligibility Unchanged by New SCOTUS Precedent](#)

By Jon Steingart

A driver who transported airline passengers to the airport may be eligible for overtime despite a recent U.S. Supreme Court ruling, a federal judge ruled.

WHISTLEBLOWERS

[Dueling Court Orders Leave Kentucky Whistleblower Suit a Tangle](#)

By Alex Ebert

An unprecedented split between two Kentucky judges in the same courthouse is tangling a high-profile whistleblower case in which legislators are seeking to keep sexual harassment allegations against them secret.

NLRB

[NLRB Weekly Summary of Cases, Dated Dec. 10-14, 2018](#)

Summary of NLRB decisions for week of Dec. 10-14, 2018

BUSINESS OF LAW

[Attorneys' Fee Award Properly Reduced After Offer Rejected](#)

By Bernie Pazanowski

Attorneys' fees awarded under the Fair Labor Standards Act were properly reduced after the plaintiff rejected a settlement offer that was larger than the damages awarded by the jury, the U.S. Court of Appeals for the Fifth Circuit said Dec. 27.

HEALTH CARE & BENEFITS

[Shutdown No Reason to Halt DOL Health Rule Suit, States Say](#)

By Jacklyn Wille

States challenging the Labor Department's new rule on association health plans said their lawsuit should continue during the federal government shutdown.

[KPMG Denied Quick Appeal in Hospital Pension Suit](#)

By Jacklyn Wille

KPMG LLP can't immediately appeal a decision favoring hospital workers who want to hold the auditing firm liable for aiding and abetting a multimillion-dollar shortfall in their pension plan.

HUMAN RESOURCES

[HR Buzz: 10, 9, 8 ... / Online Cred / Money Money Money](#)

By Cathleen O'Connor Schoultz

Employers' New Year's resolutions in 2019 will include hiring lots of workers, from mobile app developers to wind turbine techs and medical assistants. Almost 55 percent of companies plan to hire next year, outplacement firm Challenger, Gray & Christmas Inc. says, based on a survey of 150 companies in November. That's a nine percentage point more hopeful outlook than Challenger saw this time last year.

ALSO IN THE NEWS

[Energy Staffer Not Entitled to Injunction in Trade Secrets Suit](#)

By Patrick Dorrian

DTC Energy Group Inc. can't effectively halt the business operations of a rival employment agency it accuses of stealing its trade secrets, a federal appeals court ruled.

[Worker Claiming Pot Brownie Slip-Up Won't Get DHS Job Back](#)

By Porter Wells

The Department of Homeland Security doesn't have to prove a worker's intent to engage in disqualifying misconduct to properly remove him from his job, the U.S. Court of Appeals for the Federal Circuit said Dec. 28.

[Chat Apps: Coming Soon to an Office Near You](#)

By Andrew Wallender

If your workplace doesn't already use chat apps for day-to-day communication, it soon may.

[Microsoft, CVS to Explain How Worker Pay Factors into CEO's](#)

By Andrea Vittorio

Microsoft Corp. and CVS Health Corp. are among a handful of companies that have pledged under investor pressure to explain how their chief executive officer's pay factors in pay for the rest of the workforce.

[Texas Job Growth to Take Hit If Oil Rout Drags On, Fed Says](#)

By Rachel Adams-Heard

Job growth in the Lone Star State will likely weaken in the first half of 2019 if oil prices remain at current levels, according to the Federal Reserve Bank of Dallas.

[Some Federal Workers Feel Pinch as Shutdown Enters Seventh Day](#)

By Erik Wasson and Anna Edgerton

Some federal workers will begin to feel the pain of the partial U.S. government shutdown on Friday as the closure enters its seventh day.

LATEST CASES

[Case: Discrimination/Arbitration \(E.D. Mich.\)](#)

An XPO Logistics employee must arbitrate her age-discrimination and

retaliation claims against the company. She alleged that an arbitration provision in her employment agreement wasn't enforceable because it didn't impose a mutual obligation to arbitrate, but the Sixth Circuit only requires that a contract as a whole impose mutual obligations on both parties, and the court said that the employee overestimated the cost of arbitration, and that the Supreme Court has found that arbitration doesn't undermine the EEOC's role in enforcing the Age Discrimination in Employment Act. The case is *Spencer v. XPO Logistics*, 2018 BL 481046, E.D. Mich., 17-14084, 12/28/18.

[Case: Wage & Hour/Overtime Exemptions \(E.D. Mo.\)](#)

Drivers for a St. Louis-area transportation company are exempt from overtime requirements as drivers of vehicles that are designed to transport more than eight passengers, because the vans they drove were designed to carry 15 passengers, including the drivers, and the modifications the company made--including the removal of bench seats to allow room for luggage--aren't significant enough to change the 'design' of the vehicle. The case is *Berry v. Best Transp., Inc.*, 2018 BL 479746, E.D. Mo., 4:16-cv-00473-JAR, 12/27/18.

[Case: Wage & Hour/Overtime \(E.D. Wis.\)](#)

A mechanic for a Milwaukee, Wisconsin, motorcycle dealership may go to trial on his claim for unpaid overtime, despite the dealership's contention that he never notified his supervisor that he performed uncompensated work at meetings where they discussed his paychecks, because he said that he only discussed significant time discrepancies with his supervisor, and that the supervisor once informed him that it was state law to deduct thirty minutes for a lunch break. The case is *Shivalec v. Milwaukee Mixed Metal Cycles LLC*, 2018 BL 479414, E.D. Wis., 17-CV-1245, 12/27/18.

[Case: Wage & Hour/'Wages' \(Mass.\)](#)

Damages awarded to laid off employees of the defunct ISIS Parenting company under the federal Worker Adjustment and Retraining Notification Act aren't 'earned wages' recoverable under Massachusetts wage law, because the damages are meant to compensate for the work they would have performed if the company had provided the proper notice before closing, rather than payment due for work performed. The case is *Calixto v. Coughlin*, 2018

BL 480882, Mass., No. SJC-12515., 12/28/18.

[Case: Wage & Hour/Tip Pooling \(E.D. Pa.\)](#)

Servers at Las Magaritas restaurant in Philadelphia didn't show that it used an improper tip-pooling arrangement by supposedly allowing managers to retain a portion of the tips reserved for busboys and food runners, because they didn't offer any evidence that the tip totals recorded by one manager weren't actually distributed to the busboys and food runners, other than minor mathematical errors. The case is *Acosta v. Las Margaritas, Inc.*, 2018 BL 479661, E.D. Pa., No. 16-1390, 12/27/18.

[Case: Discrimination/Arbitration](#)

A former employee of Dillards Department Store in Louisiana must arbitrate her claims for race-discrimination and retaliation. The parties had a valid and enforceable arbitration agreement and failed to point to any federal statute or policy that would foreclose arbitration, the court said. The case is *Ceaser v. Dillards Dep't Store*, W.D. La., 6:18-CV-00984, 12/27/18

[Case: Discrimination/Retaliatory Harassment \(M.D. Fla.\)](#)

A Florida federal court won't reconsider its decision to dismiss a fired former employee's claim that Immokalee Water subjected him to retaliatory harassment in response to his suit alleging race discrimination. He alleged in his EEOC charge only that he was fired in retaliation for the suit, the allegations of harassment weren't raised in the charge, and his argument that retaliation and retaliatory harassment are nearly identical is to no avail, because the factual allegations in his complaint changed from those in his EEOC charge. The case is *Shortv. Immokalee Water & Sewage Dist.*, 2018 BL 479777, M.D. Fla., No. 2:18-cv-124-FtM-38CM, 12/27/18.

[Case: Individual Employment Rights/First Amendment \(D.N.M.\)](#)

A former detention officer in Curry County, New Mexico may not go to trial on her claims under the First Amendment and state law alleging that she was fired in retaliation for making safety complaints and for sending a text message to officers during working hours as part of an effort to organize the officers into a union. Even if her complaints were protected by the First Amendment, she

couldn't show that the county took action against her because of her complaints, the court held. The case is Sinfuego v. Curry Cty. Bd. of Cty. Comm'rs, 2018 BL 480071, D.N.M., CR 15-0563 JB\GJF, 12/27/18.

[Case: Discrimination/Venue \(S.D.N.Y.\)](#)

The U.S. District Court for the Southern District of New York won't dismiss for improper venue a religious discrimination suit brought by a Jewish former employee for Quanta Services. Though venue could also be proper in a New Jersey, where the employee and a number of the named defendants reside, a substantial amount of the conduct underlying the employee's claims took place in New York, including the company's demands that he work on the Jewish holidays despite prior requests for leave that he had made from his Manhattan office. The case is Geffner v. Quanta Servs., Inc., 2018 BL 479675, S.D.N.Y., No. 18-CV-3761 (JPO), 12/27/18.

[Case: Disabilities Discrimination/Discharge \(5th Cir.\)](#)

A jury must determine whether BNSF Railway reasonably determined that a railman with Parkinson's disease wasn't qualified for his position based on safety concerns, because the fact that the company found he made safety errors during a field test--which he disputes--after he had been cleared to work by several doctors may support that it changed its evaluation process in order to ensure he wouldn't qualify to continue working. The case is Nall v. BNSF Ry., 2018 BL 480183, 5th Cir., No. 17-20113, 12/27/18.

[Case: Wage & Hours/Attorneys' Fees \(5th Cir.\)](#)

A bottle-service waitress for the Gaslamp nightclub in Houston may only recover \$25,000 in attorneys' fees on her successful claim for unpaid minimum wages, rather than the \$130,00 she requested. In adjusting her fee award downward, the trial court properly considered her rejection of the nightclub's earlier settlement offer, which would've permitted her to recover a greater amount than she did at trial, because it goes to the degree of success her attorneys obtained. The case is Gurule v. Land Guardian, Inc., 2018 BL 480203, 5th Cir., No. 17-20710, 12/27/18.

[Case: Individual Employment Rights/Contracts \(D. Mass.\)](#)

A literary agent specializing in children's books is entitled to 70 percent of her former agency's commissions for her authors' book deals, even after she quit to join another agency and helped to steer several pending book contracts to her new employer. Her oral agreement for 70 percent of the commissions on her book deals regardless of her employment status is enforceable under New York law, and the agency can't raise the "faithless servant" defense because she didn't contact her clients about moving with her until after she had resigned. The case is *Crowe v. Harvey Klinger, Inc.*, 2018 BL 480069, D. Mass., No. 16-12033-JGD, 12/27/18.

[Case: Individual Employment Rights/Contracts \(Cal. App. 6th Dist.\)](#)

A former employee of a California venture capital fund operated by his brother and sister-in-law waited too long to file his lawsuit alleging that the fund breached its oral promise to pay him 25 percent of its net profit on investments after he was fired. The court found that the employee's breach-of-contract claim accrued more than two years before he filed suit when his brother denied any obligation to pay him, rather than almost a year later when the fund received a \$50 million profit on one of its investments. The case is *Vaden v. Outfitter Ventures, LLC*, 2018 BL 479764, Cal. Ct. App., 6th Dist., H044130, unpublished 12/27/18.

[Case: Individual Employment Rights/Whistle-Blowing \(5th Cir.\)](#)

A former employee of the Texas Department of Aging and Disability Services can't proceed with her whistle-blower claim that she was fired for reporting the falsification of government records and unlawful misconduct to various state officials, a federal appeals court said in affirming the ruling of the court below. The specialist says that she was fired within 90 days of her report, but she was repeatedly disciplined for bad behavior both before and after her reports, including calling her second-level manager a "sleaze," and she wasn't able to show that she was fired because of her reports. The case is *Crampton v. Weizenbaum*, 2018 BL 479872, 5th Cir., 17-51126, unpublished 12/27/18.

[Case: Discrimination/Abstention \(W.D. Okla.\)](#)

An Oklahoma federal court won't delay a jury trial for a former City of Norman employee alleging age discrimination, even though there is a concurrent state

court proceeding addressing whether his firing violated a collective bargaining agreement. The cases don't entirely address the same issues, because, among other things, the state court proceeding is concerned with whether he engaged in serious misconduct warranting his firing, his federal case is concerned with whether the city violated the Age Discrimination in Employment Act, and the outcomes of each case could result in different damages. The case is *Green v. City of Norman*, 2018 BL 472999, W.D. Okla., No. CIV-17-510-D, 12/20/18.

[Case: Labor Relations/Secondary Boycott \(N.L.R.B.\)](#)

A union representing electrical workers violated federal labor law when it sent a letter to the Las Vegas Convention and Visitors Authority indicating that the union intended to conduct picketing at the city's convention center against an electrical contractor, the National Labor Relations Board ruled Dec. 27. According to the labor board, the union's letter didn't specify that the picketing would be limited to times when the contractor would be performing services at the convention center or to parts of the facility in which it worked, nor did the union say that the picketers would clearly disclose which contractor they were picketing against. In its opinion, the board by a 2-1 majority decided to continue applying a longstanding rule, known as the Moore Dry Dock standards, requiring that unions make such qualifications when threatening to picket a workplace shared by multiple employers. The case is *International Brotherhood of Electrical Workers Local Union 357, AFL-CIO (Desert Sun Enterprises Ltd.)*, 2018 BL 479560, N.L.R.B., 12/27/18.



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Friday, December 28, 2018

Democrats to Probe Trump Officials • Apps Take Over Work

BloombergLaw - Daily Labor Report 28 Dec 2018 07:06

By Patricio Chile House Democrats Seek Agency Oversight Democrats are likely to use their new control of the House to ramp up oversight of Trump administration agencies. That includes calling in various administration officials for questioning. Acting...

How will the Partial Government Shutdown Affect Employers, Especially Federal Contractors?

Lexology (Association of Corporate Counsel) 27 Dec 2018 22:44

After a tumultuous week on Capitol Hill, Congress adjourned Friday evening without reaching a deal to fund portions of the U.S. government, resulting in a partial government closure when funding lapsed at midnight. President Trump indicated he would not...

Case: Labor Relations/Secondary Boycott (N.L.R.B.)

BloombergLaw - Daily Labor Report 27 Dec 2018 17:26

A union representing electrical workers violated federal labor law when it sent a letter to the Las Vegas Convention and Visitors Authority indicating that the union intended to conduct picketing at the city's convention center against an electrical...

Shutdown Puts Gov't Lawyers 'Out of Office'

Courthouse News Service (United States) 27 Dec 2018 16:22

Returning to work after Christmas, U.S. District Judge Richard Seeborg offered no comment as he denied a request by the Departments of Justice and Commerce to stay a census case in light of the government shutdown. WASHINGTON (CN) – Nearly a week into...

Case: Labor Relations/Union Officials (Ariz. App. Div. 1)

BloombergLaw - Labor Relations News 27 Dec 2018 16:06

The founder and former president of an Arizona union representing emergency professionals isn't entitled to reimbursement for expenses he says he incurred on the union's behalf before losing a union election ordered by a federal court in 2014, an Arizona...



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To: [ML-NLRB-Everyone \(R\)](#)
Subject: Partial Government Shutdown
Date: Wednesday, December 19, 2018 7:36:30 AM

******* This is an informative message from your
Office of Human Resources *******

Dear Colleagues,

There has been significant press coverage about the possibility of a partial government shutdown. Please be advised that such a shutdown will not impact the NLRB. The Agency has received its appropriated funding for the fiscal year 2019 and in the event there is a partial government shutdown in the coming weeks, the NLRB will continue normal operations. **NOTE:** Although the U.S. Department of Interior (DOI), Interior Business Center (IBC), our shared services provider, is one of the federal agencies that may be impacted by the partial government shutdown, we have been assured that IBC has designated essential personnel for the processing of payroll for those agencies that are not impacted by the shutdown. We have been advised that our other federal agency partners impacted by the shutdown likewise have designated essential personnel to ensure continued business operations.

For questions on this matter, please contact Chonita Young, Director of Human Resources, at (202) 273-3831 or Chonita.young@nlrb.gov.

From: [GovExec Breaking News](#)
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Subject: Shutdown-Averting Bill Could Doom 2019 Pay Raise for Feds, At Least for Now
Date: Wednesday, December 19, 2018 12:14:33 PM

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GovExec Breaking News

December 19, 2018



[Shutdown-Averting Bill Could Doom 2019 Pay Raise for Feds, At Least for Now](#) // Erich Wagner

Republican appropriators said Wednesday morning that the stopgap measure intended to avert a partial government shutdown would not include language providing a pay raise for federal civilian employees, a move that would all but assure that President Trump's plan to institute a pay freeze will be implemented, at least for now.

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[The New Spectrum: a Survey of Mobile Connectivity in the Federal Workforce](#)

Mobile devices are having a transformative effect on the workforce at-large, as employees receive more freedom and flexibility to accomplish their work objectives in spite of geographical boundaries and location barriers. But are federal employees feeling the benefits yet? [Privacy Policy](#).

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TOP STORIES

[High Court Union Ruling Opens Door to First Amendment Challenges](#)

By Robert LaFolla

A Supreme Court decision barring public sector unions from requiring workers to pay fees has bolstered legal challenges to issues as diverse as mandatory bar memberships, funding for grape advertising, and pro-labor logos in the workplace.

[Cuomo Cites Cost to NY Workers in Bereavement Leave Veto](#)

By Genevieve Douglas

Fear that low-wage workers in New York state wouldn't be able to afford additional contributions to fund paid bereavement leave was the main reason Gov. Andrew Cuomo vetoed a leave bill.

[Labor Department Official Opts for California Over Confirmation](#)

By Chris Opfer

A key Labor Department official and the face of an effort to expand overtime pay requirements is leaving the agency and withdrawing his name from consideration for another post.

[Subscriber Notice](#)

Subscribers to this news service will not receive Editorial Highlights on Jan. 1 due to the holiday. The next Editorial Highlights email will arrive on Jan. 2.

DISCRIMINATION

[Indian Health Service Doctor Loses Discrimination Suit](#)

By Brian Flood

A former Indian Health Service doctor lost a lawsuit alleging she was discriminated against by the agency.

[Philadelphia Must Face Worker's Challenge to Diversity Hiring](#)

By Patrick Dorrian

A social work supervisor can take her claim that the Philadelphia Department of Prisons passed her over for one of two promotions because she is Native American to trial, a federal judge ruled.

[XPO Worker Must Arbitrate Age Bias, Retaliation Claims](#)

By Patrick Dorrian

XPO Logistics can require a former employee in Michigan to arbitrate her age discrimination and retaliation claims rather than pursue them in court, a federal judge ruled.

HARASSMENT & RETALIATION

[Medical Plan Provider Must Cut Ties With 'Onionhead' Leader](#)

By Patrick Dorrian

Two related New York companies that act as a discount medical plan provider must sever their employment relationships with a creator of the "Onionhead" religion, which promotes "Harnessing Happiness" but discriminated against its

employees.

WAGE & HOUR

[Federal Employees Working Despite Shutdown Sue for Pay](#)

By Jon Steingart

A pair of federal employees who are required to work without pay during the partial government shutdown filed a lawsuit Dec. 31.

['Hooters Girl' Sues to Get Paid for Customer Chat Time](#)

By Jon Steingart

Hooters doesn't fully pay bartenders and servers for all the time they spend on work tasks, according to a lawsuit filed by a former employee at a restaurant in Texas.

[Energy Firm, Workers Closer to \\$4.2M Overtime Pay Settlement](#)

By Jennifer Bennett

A Wisconsin energy firm and its employees moved one step closer to ending a dispute over unpaid wages after their \$4.2 million class settlement got a judge's preliminary approval Dec. 28.

STATE & LOCAL LAWS

[San Francisco Wants Pot Apprentices Ready to Grow as Sector Booms](#)

By Joyce E. Cutler

San Francisco hopes that by developing a rigorous apprenticeship program in the marijuana industry—much as it did in the construction industry not long ago—eligible city workers can hop on the cannabis train.

[#MeToo Rules Among 2019 Issues for Calif. Employers](#)

By David McAfee

California employers will have a plethora of new regulations to follow in 2019, and industry analysts say those related to sexual harassment are top of mind.

LABOR RELATIONS

[Locked Out National Grid Workers Get Benefits Extension](#)

By Andrew Wallender

Natural gas workers locked out of their jobs in Massachusetts since June will continue to receive unemployment benefits under legislation signed by the state's governor Dec. 31.

HEALTH CARE & BENEFITS

[States' Suit Over DOL Health Rule Proceeds Despite Shutdown](#)

By Jacklyn Wille

A lawsuit targeting the Labor Department's association health plan rule won't be paused during the government shutdown. The department will instead receive a one-week extension for an upcoming filing deadline.

[More Small Business Health Plans to Form in New Year](#)

By Madison Alder

The new year will bring a new health insurance option for some small businesses.

ALSO IN THE NEWS

[Punching In: Big Week for House Dems, SCOTUS](#)

By Chris Opfer and Jaclyn Diaz

Monday morning musings for workplace watchers

[Warren Presidential Bid Would Put Labor Issues in Spotlight](#)

By Louis C. LaBrecque

Sen. Elizabeth Warren, who launched a committee Dec. 31 to look into a presidential run, likely would put labor issues front and center if she takes the next step and formally enters the 2020 race.

[Sears May Stay Alive with Rescue Bid Cobbled by Lampert \(2\)](#)

By Josh Saul

Sears Holdings Corp. got another chance at survival after Chairman Eddie Lampert put together a last-minute, last-ditch bid to buy the retailer out of bankruptcy.

[Humming U.S. Factories End 2018 on Sour Note Amid Trade War \(1\)](#)

By Brendan Murray and Chris Middleton

Five Federal Reserve indexes of regional manufacturing all slumped in December, the first time they've fallen in unison since May 2016 and the latest evidence that a pillar of the U.S. economy has started to wobble heading into next year.

LATEST CASES

[Case: Individual Employment Rights/First Amendment \(N.D. Okla.\)](#)

A police officer for Owasso, Oklahoma can't proceed with his First Amendment claim that he was fired in retaliation for participating in a union, a court said. An internal investigation concluded that the officer violated at least 10 department policies, including using excessive and unnecessary force during arrests and reckless conduct with a shotgun, he'd previously been rehired despite engaging in similar misconduct, and he can't show that his protected activity motivated his firing. The case is *Denton v. Chambless*, 2018 BL 481673, N.D. Okla., No. 17-CV-280-GKF-FHM, 12/28/18.

[Case: Discrimination/Sexual Orientation Discrimination \(E.D. La.\)](#)

A Texas federal district court will wait to rule on whether it should dismiss a gay former Louisiana state employee's sexual orientation discrimination claim, because there's a pending appeal in another case within the same federal appellate circuit addressing whether the federal civil rights statute at issue covers such discrimination. The court will wait to see what the appeals court does before it decides the case at hand. The case is Cammack v. La. Dep't of Health, 2018 BL 481719, E.D. La., No. CIVIL ACTION NUMBER: 18-3614 SECTION: "F"(5), 12/28/18.

[Case: Discrimination/Voluntary Dismissal \(7th Cir.\)](#)

A federal appeals court won't re-open a black former employee's voluntarily dismissed race discrimination suit against Indiana Bell, even though the employee argued that, because he was proceeding without an attorney, the court should excuse his decision to base his voluntary dismissal on the fact that an EEOC investigator told him that the case was still under investigation. His lack of experience didn't make his case one of "exceptional circumstances," and he didn't timely file his motion to re-open the case. The case is Fillmore v. Ind. Bell Tel. Co., 2018 BL 481467, 7th Cir., No. 18-2355, unpublished 12/28/18.

[Case: Discrimination/Arbitration \(W.D. La.\)](#)

A CVS employee must go to arbitration for resolution of his federal civil rights claim against the company, because he signed a valid arbitration agreement as a condition of his employment, and the agreement itself assigns the question of arbitrability to the arbitrator. The case is Williams v. CVS Pharmacy, Inc., W.D. La., No. 5:18-cv-0915, 12/28/18.

[Case: Discrimination/Hiring \(D.N.M.\)](#)

A contract physician for the U.S. Department of Health and Human Services couldn't show that race, sex, or national origin bias was the reason that the agency rescinded a tentative permanent job offer, because, after the offer was made, new leadership came in and determined that she wasn't a good fit and that patients constantly complained about her. Her offer letter didn't specifically state that the offer couldn't be revoked, and her continued employment as a contractor doesn't undermine the agency's stated reasons for the rescission,

because the agency can have less demanding standards for permanent employees than for contractors. The case is Sarrai v. Azar, 2018 BL 482469, D.N.M., Civ. No. 16-1299 KK/SCY, 12/28/18.

[Case: Individual Employment Rights/Public Policy \(N.J. Super. Ct. App. Div.\)](#)

An employee for the Deptford Township Municipal Utilities Authority can't proceed with his claim that he was suspended for 10 days in retaliation for reporting that a co-worker was engaging in unlawful and violent conduct. The employee says that he reasonably feared for his safety and that he was suspended three weeks after making his report, but he can't show that the DMUA violated any laws or regulations, his report was based on the co-worker's alleged off-duty conduct, he made inappropriate comments about his supervisor, and he walked off the job without an excuse twice. The case is Gaughan v. Deptford Twp. Mun. Utils. Auth., 2018 BL 480925, N.J. Super. Ct. App. Div., No. A-5044-16T3, unpublished 12/28/18.

[Case: Discrimination/Promotion \(E.D. Pa.\)](#)

A Native American employee of Philadelphia's Department of Prisons can go to trial on a claim that she was denied a promotion because of racial discrimination based on the mayoral administration's attempts to create a diverse workforce reflecting Philadelphia's demographics. There was evidence that the city wanted to increase the number of executive-level Hispanics in the PDP, which might indicate that the employee wasn't promoted because of a discriminatory reason in violation of the organization's EEO policy, the court said. The case is Pierce v. City of Philadelphia, E.D. Pa., No. 17-05539, 12/28/18.

[Case: Disability Discrimination/'Regarded As' \(N.D. Ohio\)](#)

A scrap man for Fibercorr Mills didn't establish that the company regarded his heroin addiction as a disability for purposes of his claim that he was discriminatorily demoted from a supervisory position, because the company's requirement that he pass a drug test in order to ensure he wasn't impaired doesn't show that it regarded him as disabled. The case is Glover v. Fibercorr Mills, LLC, 2018 BL 481880, N.D. Ohio, No. 5:17-CV-1369, 12/28/18.

[Case: Disability Discrimination/Suspension \(C.D. Ill.\)](#)

An employee of an Illinois state agency with bipolar disorder must go to trial on his claim that he was suspended without pay based on his disability, because he was suspended after he was arrested for drug possession at work, and he didn't show that any non-disabled employee wasn't suspended after being arrested. The case is Hansen v. State, 2018 BL 480990, C.D. Ill., No. 17-cv-3256, 12/28/18.

[Case: Discrimination/Service of Process \(E.D. La.\)](#)

A female employee suing Textron Inc. for sexual harassment wasn't allowed an extension of time to perpetuate service. The court said that her failure to make a serious attempt at service despite two warnings from the court indicated a clear pattern of delay, and it stated that her not being forthcoming about attempts at service was an aggravating factor. The case is Bounds v. Textron, Inc., 2018 BL 481185, E.D. La., 18-4315, 12/28/18.

[Case: Disability Discrimination/'Qualified Individual' \(E.D. Ky.\)](#)

A former grocery clerk for Kroger didn't show that he was a 'qualified individual' for purposes of his claim that he was fired based on his back and shoulder impairments, because lifting between 25-50 pounds daily was an essential function of his job, and his return to work form said that he wasn't able to lift over 20 pounds. The case is Adkins v. Kroger LP I, 2018 BL 481186, E.D. Ky., No. 5: 18-156-DCR, 12/28/18.

[Case: Discrimination/Retaliation \(D. Md.\)](#)

An employee for Sentry Management Inc. can go to trial on a claim that she was fired in retaliation for reporting race and age discrimination. The company alleged that she was fired because of poor work performance, but she provided evidence that Sentry was pleased with her job performance, and the court said that the record showed that she was disciplined for following company policy, which suggested that the company provided a false reason for her firing. The case is Randolph v. Sentry Mgmt., Inc., 2018 BL 481831, D. Md., GJH-17-2176, 12/28/18.

[Case: Wage & Hour/Overtime \(La. Ct. App., 3d Cir.\)](#)

An American Pollution Control employee may not recover \$27,000 he says he's owed in unpaid overtime under Louisiana law, because the evidence shows that he was instructed to limit his working hours to 100 per week, which he routinely ignored. The case is *Acosta v. Am. Pollution Control Corp.*, 2018 BL 480974, La. Ct. App., 3d Cir., No. 18-348, 12/28/18.

[Case: FMLA/Retaliation \(C.D. Ill.\)](#)

A former employee may not proceed with his claim that the State of Illinois Central Management Services suspended him without pay in retaliation for asking for accommodations under the Family and Medical Leave Act. The employee was suspended after he was arrested at work for possession of illegal drugs, and he didn't show that his request for accommodations under the FMLA was a factor in the suspension decision, the court said. The case is *Hansen v. State*, 2018 BL 480990, C.D. Ill., No. 17-cv-3256, 12/28/18.

[Case: Wage & Hour/Trainees \(D. Ariz.\)](#)

Trainee drivers for Swift Transportation may go to trial on their claim for compensation for their first day of orientation, because, among other factors, the orientation training didn't impede the company's operations, some of the drivers say they were promised they would receive pay for that day, and the orientation was focused on information specific to the company rather than general training. The case is *Julian v. Swift Transp. Co.*, 2018 BL 481803, D. Ariz., No. CV-16-00576-PHX-ROS, 12/28/18.



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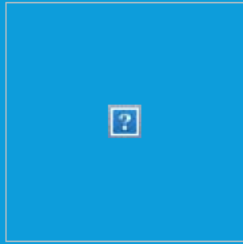
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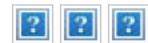
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From: [Bloomberg Law Daily Labor Report](#)
To: [Ring, John](#)
Subject: First Move: Janus Ruling Brings Challenges • Congress Kicks Off Session
Date: Monday, December 31, 2018 7:10:41 AM



What you need to know to start your day.

Janus Ruling Brings Challenges • Congress Kicks Off Session



Patricio Chile

RULING LEADS TO OTHER CHALLENGES

Mandatory bar memberships, fast-food workers wearing Fight for \$15 buttons, and fees to pay for grape advertising have at least one thing in common: Litigants claim they're not allowed because of the U.S. Supreme Court's landmark decision prohibiting mandatory fees paid to public sector unions.

How courts treat early efforts to expand the boundaries of the *Janus v. AFSCME* ruling could signal whether it will prove to be a potent weapon in future legal attacks against economic regulations, Robert Lafolla [reports today](#).

NEW YEAR BRINGS FRESH OUTLOOK

The first week of the new year brings a fresh session of Congress and a Supreme Court huddle on LGBT rights. [Punch In](#) with Chris Opfer and Jaclyn Diaz as they look at what's on deck in the labor and employment world for 2019.



Members-elect pose for the freshman class photo on the East Front of the Capitol on Nov. 14.
Tom Williams/CQ Roll Call

Chris and Jaclyn also have updates on an overdue Labor Department regulation and a new title for a DOL official. Who got a new gig?

OTHER STORIES WE'RE WATCHING

- Bryan Jarrett, the Labor Department's acting wage and hour administrator who was awaiting confirmation to run the DOL's policy shop, is **unexpectedly leaving the department**. Chris Opfer has the [story](#).
- San Francisco hopes that by developing a rigorous **apprenticeship program** in the **marijuana industry**, eligible city workers can hop on the cannabis train. The city is focusing on getting a readily available and trainable workforce for the expected jobs, Joyce Cutler [reports](#).
- Federal employees won't get across-the-board **pay increases** in calendar

year 2019 if an executive order issued by President Donald Trump on Dec. 28 isn't overruled by Congress. Unions representing federal workers, many of whom are on furlough in the 10th day of a **government shutdown**, blasted the action. Read Louis LaBrecque's [story](#).

- New York Gov. Andrew Cuomo (D) [vetoed a bill](#) that would have given workers in the state 12 weeks of paid **bereavement leave**. Genevieve Douglas is following developments.
- The D.C. Circuit's surprise ruling in the *Browning-Ferris* case could complicate **National Labor Relations Board** efforts to limit "joint employer" liability, Hassan Kanu [reports](#).
- Law firms are touting diversity, but according to an analysis of firm **partnership promotions**, the talk hasn't translated into **gender parity** in the partner ranks. Across the top 15 law firms by revenue, women only accounted for 38 percent of the total partners announced in 2018. Stephanie Russell-Kraft has [the story](#).
- Subscribers to this news service will not receive First Move on Jan. 1. The next First Move will arrive on Jan. 2.

AROUND THE WEB

- **Defense contractors** are using new tactics to find welders and other skilled tradespeople at a time of surging military spending and low unemployment, [the Wall Street Journal reports](#).
- Sears plans to close 80 more stores in March, as the troubled **retailer** may be forced **liquidate** its business entirely, [CNBC reports](#).
- Global Speciality Metals announced it's **suspending production** at its Niagara Falls, N.Y., plant, putting 100 people out of work, [WKBW Buffalo reports](#).
- Vermont will start accepting applications Jan. 1 for a program that will pay **remote workers** up to \$10,000 to move to the state, [the Associated Press reports](#).

For all of today's Bloomberg Law headlines, visit [Daily Labor Report](#)



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To: [Ring, John](#)
Subject: Poll: Federal Employees Overwhelmingly Oppose Shutdown, Only 30 Percent Support Wall
Date: Monday, December 31, 2018 1:35:08 PM

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GovExec Breaking News

December 31, 2018



[Poll: Federal Employees Overwhelmingly Oppose Shutdown, Only 30 Percent Support Wall](#) // Eric Katz

More than seven in 10 federal employees oppose the current partial government shutdown, though some civil servants support President Trump's proposed wall along the U.S.-Mexico border so strongly they are willing to see agencies shutter.

[Read full article »](#)

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[The New Spectrum: a Survey of Mobile Connectivity in the Federal Workforce](#)

Mobile devices are having a transformative effect on the workforce at-large, as employees receive more freedom and flexibility to accomplish their work objectives in spite of geographical boundaries and location barriers. But are federal employees feeling the benefits yet? [Privacy Policy](#).

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GovExec Today

December 31, 2018



A note from the editors: *This has been another eventful year for federal employees. While the partial government shutdown has dominated recent headlines, there was more to 2018 than budget brinkmanship. In case you missed these stories when they were first published, we've put together this list highlighting some of our most important coverage in 2017.*

['Abolish ICE' and the Future of the Immigration Agency](#) // Charles S. Clark

The immigration enforcement agency's identity is more fluid than ever.

[Allegations of Rampant Sexual Harassment and Rape Roil Federally Run College](#) // Eric Katz

Victims tell of the misconduct they endured, and the retaliation they faced.

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[Mission Possible: Protecting Federal Users Anytime Anywhere](#)

With a growing number of agency apps running in the cloud and employees connecting remotely from mobile devices and laptops, there's increased demand for an alternative to the Trusted Internet Connection (TIC). Rather than relying on incumbent, network-centric technologies, agencies are using the Zscaler cloud service and its FedRAMP authorized zero trust solution to decouple application access from network access. [Privacy Policy](#).

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[Democrats' Coming Oversight Agenda: Subpoenas But Little Bipartisanship?](#) // Charles S. Clark

Incoming chairs Cummings and Nadler vow to "restore integrity to government."

[State Department Still Has a Lot of Vacancies: Pompeo's Mixed Success](#) // Charles S. Clark

Though hiring is a stated top priority, budget constraints have kept numbers down.

[After 40 Years, A Look Back at the Unlikely Passage of Civil Service Reform](#) // Charles S. Clark

The Carter Era law tackled problems that sound very familiar under Trump.

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[Mission Possible: Protecting Federal Users Anytime Anywhere](#)

With a growing number of agency apps running in the cloud and employees connecting remotely from mobile devices and laptops, there's increased demand for an alternative to the Trusted Internet Connection (TIC). Rather than relying on incumbent, network-centric technologies, agencies are using the Zscaler cloud service and its FedRAMP authorized zero trust solution to decouple application access from network access. [Privacy Policy](#).

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From: [GovExec Breaking News](#)
To: [Ring, John](#)
Subject: After Failed White House Meeting, Republicans Suggest Shutdown Agreement Could Take "Weeks"
Date: Wednesday, January 2, 2019 5:47:26 PM

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GovExec Breaking News

January 2, 2019



[After Failed White House Meeting, Republicans Suggest Shutdown Agreement Could Take 'Weeks'](#) // Eric Katz

No deal emerged on Wednesday from a White House meeting between President Trump and the congressional leadership of both parties, with the president saying there is no end in sight to the partial government shutdown.

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Subject: Democrats Announce Plan to Reopen Government, Including a Pay Raise for Feds
Date: Wednesday, January 2, 2019 10:29:29 AM

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GovExec Breaking News

January 2, 2019



[Democrats Announce Plan to Reopen Government, Including a Pay Raise for Feds](#) // Eric Katz

House Democrats have announced their opening bid to end the shutdown when they retake the majority on Thursday, stating their plan to pass a combination of six Senate appropriations bills to fund agencies that are closed as well as a continuing resolution for the Homeland Security Department.

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From: [Morning Shift](#)
To: [Ring, John](#)
Subject: POLITICO's Morning Shift: No bills, no pay — Pushing the reset button — Raising the minimum wage?
Date: Wednesday, January 2, 2019 10:05:26 AM

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2018 Newsletter Logo: Morning Shift



01/02/2019 10:00 AM EDT

By REBECCA RAINEY (rrainey@politico.com; [@RebeccaARainey](#))

With help from Ian Kullgren

Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click

[here.](#)

QUICK FIX

A nine-agency squeeze from the partial government shutdown will likely mean no Jan. 11 paycheck for many federal workers.

— **Democratic and Republican congressional leaders** meet today with President Donald Trump for the first time since the shutdown began.

— **Twenty states will have higher minimum wages** this year, but will Congress budge on the \$7.25 national hourly minimum?

— **With House Democrats' new oversight powers**, corporations may need to keep a closer eye on diversity.

HAPPY NEW YEAR! It's Wednesday Jan. 2, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to rrainey@politico.com, thesson@politico.com, ikullgren@politico.com and tnoah@politico.com. Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren) and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

NO BILLS, NO PAY: The newly Democratic House is expected Thursday to vote to fund the Department of Homeland Security until Feb. 8 and the eight other shutdown agencies through September. But that won't likely fly with Senate Republicans, POLITICO'S Jennifer Scholtes, Caitlin Emma and Bernie Becker report. Neither party has budged on the border wall, so this shutdown could go on for awhile.

Many of the shuttered departments and agencies won't be able to cut paychecks on Jan. 11 if the impasse doesn't end. D.C. Mayor Muriel Bowser has directed several District offices to stay open longer to receive unemployment claims. More [here.](#)

THE WHITE HOUSE

PUSHING THE RESET BUTTON?: Bipartisan leaders will meet with President Donald Trump at the White House for a briefing on the border wall by top Homeland Security Department officials, POLITICO's Rachael Bade and John Bresnahan report. "There have been virtually no discussions until this point, and

the meeting would offer both sides a chance to restart talks," they write. More [here](#).

WAGES

RAISING THE MINIMUM WAGE?: Nineteen states and the District of Columbia raised their hourly minimum wages above the federal \$7.25 minimum on Jan. 1, and Oregon will follow suit in July, according to data from [The National Conference of State Legislatures](#). House Democrats are expected to [propose](#) early in the new Congress a minimum wage hike, and now might be the perfect time for Republicans to cut a deal, given low unemployment and Republican voters' tendency to support a higher minimum wage. But Democrats may have to back off their demand that the federal minimum be doubled.

"We are firmly opposed to a \$15 minimum wage," Marc Freedman vice president of employment policy at the U.S. Chamber of Commerce told Morning Shift. "Any discussion of the minimum wage needs to provide employers with something," he said. Jim Manley, who served as communications director for former Nevada Senator Harry Reid when Reid was Senate majority leader, said a wage boost could be achieved this year if the right carrots were offered to Republicans. "The minimum wage has always been done on a bipartisan basis. That's how to get out of this," he said. "To get it done, in this day and age, you have to pair it with something."

But the SEIU-backed Fight for \$15 movement, which has enjoyed tremendous success at the state and federal level, is in no mood to compromise. "The Fight for \$15 will not back down until all workers win the \$15 an hour and union rights the movement has demanded since Day One," Fight for \$15 Organizing Director, Allynn Umel, told Morning Shift in a written statement.

GREATER DIVERSITY SCRUTINY: Rep. [Maxine Waters](#) (D-Calif.), now the first woman and first African-American to chair the House Financial Services Committee, will use her oversight power to expand corporate diversity, Zachary Warmbrodt reports for POLITICO. Lobbyists say companies aren't happy about that. Waters has proposed creating a diversity subcommittee, and other Financial Service committee members are preparing legislation that would require companies to disclose the gender and racial makeup of their boards. Lobbyists say that although companies won't push back on the Democrats' diversity efforts, "many are uneasy about the prospect of government getting directly involved in their hiring decisions." More [here](#).

AT THE BORDER

KELLY: 'IT'S NOT A WALL:' Recently-departed White House chief of staff John Kelly said in an exclusive interview with the Los Angeles Times that the administration "early on" abandoned the idea of a solid wall. "The president still says 'wall' — oftentimes frankly he'll say 'barrier' or 'fencing,' now he's tended toward steel slats. But we left a solid concrete wall early on in the administration, when we asked people what they needed and where they needed it." Kelly nonetheless believes there is an "immigration problem" and, he said that border agents say "'we need a physical barrier in certain places, we need technology across the board, and we need more people.'" More from the Los Angeles Times [here](#).

UPDATE ON BORDER ILLNESSES: Border Patrol referred 451 cases to a medical provider Dec. 22-30, of whom 259 were children, according to an update released by the agency Monday. Some 17, including six children, are currently hospitalized. The update comes after the deaths last month of [two migrant children](#) in government custody. "Border Patrol stations built decades ago are not resourced to handle this crisis and are not the best facilities to house children with their parents for extended periods," CBP Commissioner Kevin K. McAleenan said in a statement. On December 26, the Coast Guard deployed "surge medical assistance teams" to the U.S.-Mexico border. The Public Health Service will this week deploy additional teams to assist, according to the announcement.

UNION SUES OVER SHUTDOWN: The nation's largest federal employees' union is seeking damages from the government on behalf of roughly 400,000 federal employees who must work without pay during the partial government shutdown, POLITICO's Caitlin Emma reports. The American Federation of Government Employees argues in a lawsuit filed Monday that two employees working in Justice Department high-security prisons have been forced to work overtime without pay. More [here](#).

TRUMP OFFICIALLY CANCELS FEDERAL PAY BOOST: President Donald Trump signed an [executive order](#) Friday officially canceling across-the-board pay raises for civilian workers across the federal government. Under the policy, which was announced in August, around 1.8 million workers, including Border Patrol and ICE agents, will be denied the 2.1 percent automatic pay boost that was slated to take effect this month. More on the August announcement from POLITICO [here](#).

BATTLE OVER VET WORKERS IN DC: With Amazon's new regional

headquarters taking up shop in the Pentagon's backyard, local defense contractors fear heightened competition over skilled veterans who possess the clearances necessary to win local government IT and defense contracts, Doug Cameron and Ben Kesling report for the Wall Street Journal. The tech giant is already pursuing contracts with the DOD and says it aims to increase its veteran workforce to 25,000 over the next three years, according to the Journal. Amazon has also partnered with DOL to train 1,000 veterans in cloud computing — some of whom now work for Amazon Web Services. More [here](#).

COFFEE BREAK

— "Big Tech May Look Troubled, but It's Just Getting Started," from [The New York Times](#)

— "Living paycheck to paycheck is disturbingly common: 'I see no way out.'" from [The Washington Post](#)

— "Warren's 2020 agenda: Break up monopolies, give workers control over corporations, fight drug companies" from [The Washington Post](#)

— "Sexual misconduct on crowded airlines is happening more often. What airlines are doing about it," from the [Los Angeles Times](#)

— "Bakers signs unemployment bill for locked-out National Grid workers" from [The Boston Globe](#)

— "Bernie alumni seek meeting to address 'sexual violence' on '16 campaign," from [POLITICO](#)

THAT'S ALL FOR MORNING SHIFT!

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TOP STORIES

[Wells Fargo Can't Break Up Advisers' Class Arbitration](#)

By Perry Cooper

Wells Fargo financial advisers will continue with classwide arbitration of their overtime claims after the bank failed to convince a federal court Jan. 2 to overturn the arbitrator's decision.

[Uber to Pay \\$1.3 Million Misclassification Settlement](#)

By Jon Steingart

Uber Technologies Inc. and drivers who say they were misclassified as independent contractors won final approval of a \$1.3 million settlement.

[AT&T Workers' Web Clicks Show Intent to Arbitrate Bias Claims](#)

By Patrick Dorrian

Two AT&T employees who allege the telecommunications giant acted to replace older workers with younger ones by 2020 must arbitrate their allegations, a federal court in New Jersey ruled.

[New Congress to Take Up Minimum Wages, LGBT Discrimination](#)

By Chris Opfer

Lawmakers return to Congress with an eye on 2020, and that could shape labor policy in the new legislative session.

DISCRIMINATION

[Rumored Nix of Unintentional Bias Theory Unlikely to Affect EEOC](#)

By Paige Smith

It will be challenging to eliminate a key legal doctrine used to prove unintentional workplace discrimination, according to management side attorneys and former civil rights agency officials. That's not stopping the Trump administration from trying.

[Amazon Finalizing Transgender Bias Settlement](#)

By Patrick Dorrian

Amazon and a transgender female employee who sued for harassment and other bias she allegedly faced while working at a Kentucky shipping facility need a little more time to finalize a proposed settlement.

[Missouri State Worker's \\$1M Age Bias Judgment Upheld](#)

By Patrick Dorrian

Missouri must pay more than \$1 million in damages and legal costs to an employment claims worker illegally denied promotion at age 55, the Missouri Court of Appeals said Jan. 2.

WAGE & HOUR

[Buffalo Wild Wings Settles Servers, Bartenders Wage Claims](#)

By Patrick Dorrian

Buffalo Wild Wings and related companies have settled with a group of servers

and bartenders who accused the restaurant chain of skirting federal tip-credit and minimum wage laws and similar Missouri state requirements.

HARASSMENT & RETALIATION

[Trial Closer in Whistleblowing State Actuary's Retaliation Suit](#)

By Porter Wells

A Pennsylvania state actuary moved one step closer to trial in his suit alleging he was forced to retire in retaliation for reporting about rate irregularities involving Aetna.

STATE & LOCAL LAWS

[States of Work: Albuquerque City Workers Get Parental Leave](#)

By Phil Kushin

Dive into the "States of Work" weekly roundup of state and local labor and employment developments. The new year brings paid parental leave to New Mexico's largest city, as well as to Kansas court employees, and New York employers face a minimum wage increase, with more to come.

LABOR RELATIONS

[GM, Auto Workers Face Off Over Use of Temps \(1\)](#)

By Jaclyn Diaz

The United Auto Workers is suing General Motors over a breach of the union contract by using temporary workers instead of the roughly 1,000 laid-off workers for its Fort Wayne, Ind., assembly plant, the UAW announced Jan. 3.

[National Grid and Unions End Lockout, Reach Agreement \(1\)](#)

By Adrienne Appel

British utility National Grid PLC and 1,250 United Steelworkers Local 12003 and 12012-04 in Massachusetts have reached a tentative agreement on a new

contract, ending a six-month lockout of the gas workers, the union announced late Jan. 2. "All picketing will cease immediately," Local 12012-04 said in a statement.

NLRB

[Kaiser Opts to Fight Complaint Involving 85,000 Workers](#)

By Hassan A. Kanu

Kaiser Permanente has decided to fight a federal labor board case alleging it has been unlawfully refusing to bargain with its employees' unions.

BLOOMBERG LAW INSIGHTS

[INSIGHT: Don't Make These Mistakes When Checking for Pay Bias](#)

By Jonathan A. Segal

It's the time of year when many employers analyze what they pay employees to make sure they are paid fairly. Jonathan A. Segal, partner with Duane Morris, reveals eight common mistakes employers make when conducting their pay equity evaluations. Hint: it's a good idea to hire an expert.

HEALTH CARE & BENEFITS

[New York Times Keeps Fighting Pension Liability Calculation](#)

By Jacklyn Wille

The New York Times is continuing its legal battle against a union pension fund over a calculation method the Times said wrongly inflated its liability of millions of dollars.

[Quest Not Liable for Wellness Plan's \\$500 Surcharge](#)

By Jacklyn Wille

A Xerox Corp. worker charged \$500 by an employee wellness program for failing to provide health information lost his lawsuit against Quest Diagnostics.

[Wall Street Group Wants Justices to Take USC Retirement Case](#)

By Jacklyn Wille

A Wall Street trade group whose members include Goldman Sachs and JPMorgan asked the U.S. Supreme Court to undo a decision making it harder for companies to use arbitration agreements to avoid retirement plan class actions.

SAFETY & HEALTH

[Plumbing Contractor Faces \\$57K in Fines After Trench Cave-In](#)

By Christopher Brown

A Colorado plumbing contractor faces \$57,463 in fines over trenching violations at a residential construction site where a worker died in a trench cave-in.

[Wireless Monitoring Can Limit Injuries but Raises Concerns](#)

By Bruce Rolfsen

Before employers ask workers to wear motion monitors as part of safety programs, they must assure employees the findings won't be used in performance reviews, a new report advises.

ALSO IN THE NEWS

[Trump Labor Picks Still Sidelined by Senate Inaction](#)

By Tyrone Richardson

President Donald Trump will have to renominate several designates for posts to the Labor Department and other agencies next year, a result of the Senate failing to agree to a confirmation deal before ending this Congress.

[Schiff Hardin Wins Attorney Immunity in Representation Spat](#)

By Porter Wells

Texas's attorney immunity doctrine protects Schiff Hardin LLP from having to defend claims of negligent misrepresentation brought by Ironshore Europe DAC, the U.S. Court of Appeals for the Fifth Circuit said Jan 2.

[Drunken Ellis Island Officer's Firing to Be Revisited](#)

By Louis C. LaBrecque

A U.S. Park Police officer who was fired for drinking on the job will get a chance to show that past events, like being trapped in a Statue of Liberty facility and fearing he would drown during Hurricane Sandy, played a role in his behavior.

[Lacking Quorum, Civil Rights Agency Awaits Renominations](#)

By Paige Smith

Today marks the start of the 116th Congress, and the Equal Employment Opportunity Commission also begins the year without a quorum. The Senate missed the Jan. 2 deadline to confirm three nominees to the civil rights agency, meaning that the Trump administration must start the process again from scratch.

[Economists See No Repeat for Strong 2018 U.S. Job Gains \(1\)](#)

By Jeff Kearns

As the U.S. wraps up a year of surprisingly strong job growth, such gains are unlikely to repeat in the next 12 months with economic headwinds intensifying for the country and rest of the world.

[U.S. Factory Gauge Falls Most Since 2008 as Orders, Output Cool](#)

By Jeff Kearns

A gauge of U.S. manufacturing plunged last month by the most since October 2008, a fresh sign of deceleration in the economy amid global strains across the sector.

[U.S. Jobless Claims Hit Four-Week High Amid Federal Shutdown](#)

By Katia Dmitrieva

Filings for U.S. unemployment benefits rose to a four-week high at year's end, amid holidays that tend to make the figures more volatile and a partial government shutdown that may have spurred federal workers to request funds.

[Firms in U.S. Hired Most Workers Since Early 2017, ADP Says \(1\)](#)

By Shobhana Chandra

Companies added the most workers in almost two years to U.S. payrolls in December, exceeding forecasts and signaling that the job market was solid as 2018 came to an end.

[Robots Aren't Yet Killing Off All Our Jobs, World Bank Says](#)

By Natalia Drozdiak

The rise of automation has so far had a negligible impact on jobs at a global scale, the World Bank chief economist said, despite common gloomy predictions that humans are set to be replaced by machines.

LATEST CASES

[Case: Discrimination/Hiring \(M.D. Fla.\)](#)

An Egyptian-American candidate discontinued from the hiring process for a deputy sheriff position with the Brevard County Sheriff's Office will go to trial on a claim that he was rejected because of his race, national origin, or both. A major's statement that cultural differences might make the candidate "difficult to deal with professionally" wasn't blatant enough to be direct evidence, because a jury might infer a legitimate concern about the candidate's ability to perform, but the evidence could definitely create a convincing mosaic of circumstantial evidence pointing to discrimination, the court said. The case is *Saweress v. Ivey*, M.D. Fla., No. 6:17-cv-1506-Orl-37TBS, 1/1/19.

[Case: Discrimination/'Employer' \(7th Cir.\)](#)

An employee for a subsidiary of Xerox can't proceed with his federal employment discrimination claims against Quest Diagnostics, despite his argument that Quest controlled part of his pay by supplying medical information to Xerox to determine whether the employee should be issued a "tobacco surcharge" as part of Xerox's wellness program to create a tobacco-free workplace. Quest wasn't his "employer" within the meaning of the federal statute at issue, because Xerox decided what to do with the information Quest provided, and it was Xerox's decision alone to implement the surcharge. The case is *Dittmann v. Quest Diagnostics, Inc.*, 2019 BL 940, 7th Cir., 17-1979, unpublished 1/3/19.

[Case: Wage & Hour/Arbitration \(S.D.N.Y.\)](#)

Financial advisors for Wells Fargo may proceed before an arbitrator with their class-action claim for unpaid overtime, because there is no requirement that parties must expressly agree to class arbitration, and the arbitrator properly considered the arbitration agreement's lack of a class action waiver, along with other factors, in determining that it permitted class arbitration. The case is *Wells Fargo Advisors LLC v. Tucker*, 2019 BL 449, S.D.N.Y., No. 18 Civ. 6757 (PAE), 1/2/19.

[Case: Wage & Hour/Collective Certification \(S.D.N.Y.\)](#)

Hourly employees of a New York audio equipment company showed they have sufficiently similar unpaid overtime claims to argue them collectively, because they provided evidence that they were all required to work through one-hour lunch breaks without pay, regardless of whether they worked on- or off-site. The case is *Douglas v. Anthem Prods., LLC*, 2019 BL 843, S.D.N.Y., 18-CV-5789 (VEC), 1/2/19.

[Case: Individual Employment Rights/First Amendment \(4th Cir.\)](#)

A former corrections facility supervisor, who was fired for violating a sheriff's office confidentiality policy when he told his wife who worked at an NBC news station about a disturbing surveillance video, may have been protected by the First Amendment for speaking on a matter of public concern. The video captured the beating and tasing of a restrained prisoner, and the prisoner died the following day. The Fourth Circuit didn't reach the sheriff's argument that he

couldn't be sued because it wasn't clearly established law that a public employee's speech on serious governmental misconduct outweighs the "reasonable apprehension" of disruption to the workplace caused by a violation of its confidentiality policy. The case is *Billioni v. Bryant*, 2019 BL 286, 4th Cir., 17-1854, 1/2/19.

[Case: Discrimination/Voir Dire \(Mo. Ct. App. W.D.\)](#)

In an age-discrimination case that resulted in a judgment against the Missouri Department of Labor & Industrial Relations and the Missouri Department of Employment Security, the trial court didn't err by permitting the employee's counsel to improperly instruct the venire panel about the law during voir dire, a court said. The trial court advised the panel members that it was the court's job to instruct them about the law they would apply to the facts, and the appellate court found that there was no discussion during voir dire that was inconsistent with this instruction and that the jury understood that it would look to the trial court regarding the law. The case is *Terpstra v. Mo., Dep't of Labor & Indus. Relations Comm'n*, 2019 BL 613, Mo. Ct. App. W.D., No. WD80967, 1/2/19.

[Case: Wage & Hour/Tip Credit \(W.D. Mo.\)](#)

Buffalo Wild Wings failed to show that its tipped employees may not bring a collective claim for improper use of the tip credit due to a recent U.S. Department of Labor opinion letter that eliminated the 20- percent limitation on the amount of time an employee may spend on non-tipped duties and receive the reduced minimum wage. The opinion letter isn't entitled to deference because it doesn't provide sufficient reasoning to explain why the department decided to eliminate the long-standing 20-percent limitation. The case is *Cope v. Let's Eat Out, Inc.*, 2019 BL 404, W.D. Mo., 6:16-cv-03050-SRB, 1/2/19.

[Case: Disability Discrimination/Reasonable Accommodation \(E.D. Mich.\)](#)

A Ford assembly plant process coach can't go ahead with his failure-to-accommodate claim based on the company's refusal for a nine-month period to reinstate him due to his eight-hour daily, 40-hour weekly medical restrictions after he took leave for back pain and high blood pressure. Their home plants paid the "borrowed" laid-off process coaches who performed extra production

supervisor work, and corporate staffing policy limited the number of such positions allocated to the plant, so there weren't any open positions available, and he wasn't able to work the essential overtime that the job entailed, the court found. The case is *Johnson v. Ford Motor Co.*, 2019 BL 423, E.D. Mich., No. 17-cv-11412, 1/2/19.

[Case: Discrimination/Tribal Sovereign Immunity \(D. Alaska\)](#)

A Native-Alaskan respiratory therapist formerly employed by the Alaska Native Tribal Health Consortium can't go forward with a claim under 42 U.S.C. § 1981 that she was treated differently than white co-workers. Unlike an Alaska Native Corporation, ANTHC is created and controlled by Alaska Native tribes and both promotes tribal self-determination and carries out governmental functions in addition to receiving federal funds, so therefore it's an arm of the Alaska Native tribes that's entitled to tribal sovereign immunity, the court said. The case is *Barron v. Alaska Native Tribal Health Consortium*, D. Alaska, 3:18-cv-00118-SLG, 1/2/19.

[Case: Labor Relations/Public Employees \(Pa. Commw. Ct.\)](#)

An arbitrator erred in reinstating a city employee who was absent from work three consecutive days because of his arrest and incarceration on charges of driving under the influence and firearm possession. The arbitrator found no evidence or justification for the city's failure to hold open his position, but the arbitrator went beyond the terms of the labor contract to find that an open-ended period of incarceration constituted a valid excuse for an employee's absence. The case is *City of Erie v. Gen. Teamsters Local 397*, 2019 BL 918, Pa. Commw. Ct., 150 C.D. 2018, 1/3/19.

[Case: Discrimination/Retaliation \(E.D. La.\)](#)

A 56-year-old white female job applicant can proceed on her claims alleging that two former Louisiana school board officials retaliated against her for filing a lawsuit alleging that the school board didn't hire her to be its director of transportation because of her age, race, and sex. She alleged that one official said that he would "never" hire her and was "going to teach her a lesson" and that the other official said that he would now "never" vote to approve her for the director job. The case is *Notariano v. Tangipahoa Par. Sch. Bd.*, E.D. La., 16-

[Case: Discrimination/Retaliation \(E.D. Wis.\)](#)

A female deputy director may not proceed with her claim that the Wisconsin Department of Health Services, among other things, didn't promote her to a director position in retaliation for complaining about sex discrimination. The Department felt that the selected candidate was the stronger candidate for the director position and the deputy director didn't show that her complaint was a factor in the promotion decision, the court said. The case is *Robertson v. Wis. Dep't of Health Servs.*, 2019 BL 548, E.D. Wis., 18-CV-116-JPS, 1/2/19.

[Case: Discrimination/Waiver \(N.D.N.Y.\)](#)

A New York federal court won't dismiss a former United Parcel Service employee's age discrimination claim, even though the company argued that he waived the claim when he signed a separation agreement before resigning, because the agreement didn't refer to the Age Discrimination in Employment Act and thus didn't comply with the requirements set forth under another federal statute requiring that any waiver of ADEA claims must be made knowingly and voluntarily. The case is *Valley v. United Parcel Serv., Inc.*, N.D.N.Y., No. 3:18-CV-0284 (GTS/DEP), 1/2/19.

[Case: Labor Relations/Arbitration \(N.D. Ill.\)](#)

An arbitrator didn't err in finding that Mondelez Global LLC unlawfully changed its past practice of allowing employees to work voluntarily seven consecutive days without a 24-hour rest period. The employer argued that the award requires it to violate an Illinois statute allowing rest breaks and is contrary to public policy, but the employer's past practice didn't "require" employees to work seven days, and the statute allows parties to contract around it. The case is *Mondelez Glob. LLC v. Machinists Local Lodge 1202*, 2019 BL 123, N.D. Ill., No. 17 C 8628, 1/2/19.

[Case: Wage & Hour/Preemption \(W.D.N.Y.\)](#)

A Buffalo, New York, banquet hall didn't show that it couldn't comply with both a federal Internal Revenue Code provision requiring employers to withhold a portion of service charges for tax purposes and a state regulation requiring

employers to distribute service charges to employees unless they specify that the charge isn't a gratuity, because, among other factors, withholding taxes likely isn't improper "retention" of gratuities within the meaning of the regulation. The case is *Davis v. 2191 Niagara St., LLC*, 2019 BL 839, W.D.N.Y., 15-CV-0429-A, 1/2/19.

[Case: Discrimination/Reduction in Force \(E.D. Tex.\)](#)

A senior business manager who was hired at age 60 by Universal Cable Holdings, Inc. was denied a trial on her claim that she was laid off three years later because of age discrimination, rather than overall restructuring and a reduction in force, given that 150 other employees were let go as part of the reduction, including the 61 year-old manager that decided to eliminate her position, and the fact that the same manager also hired her gave rise to an inference that she wasn't let go because of discrimination, the court said. The case is *Shockey v. Universal Cable Holdings, Inc.*, 2019 BL 836, E.D. Tex., 6:17-CV-00613-JDL, 1/2/19.

[Case: Discrimination/Hiring \(D.N.M.\)](#)

A Spanish-born job applicant denied a full-time math instructor position at Central New Mexico Community College may proceed with a claim that he was rejected due to national-origin discrimination. The school made little effort to defend its decision not to hire the applicant for this position, he showed that he met the minimum qualifications for the position and that a non-Hispanic white applicant was hired, and he can file a surreply offering evidence that the school chose an applicant with more than twice his interview score as a front for discrimination based on his being selected as a finalist for the position, the court said. The case is *Gonzalez-Aller v. Governing Bd.*, 2018 BL 465324, D.N.M., Civ. No. 17-639 KK/SCY, 12/14/18.

[Case: Discrimination/Class Action \(S.D. Cal.\)](#)

A group of African refugees who are current and former employees of the Bristol Bay Native Corporation were denied their request to proceed as a class in a case alleging discrimination based on race, national origin, and religion. The employees failed to show that there were too many of them to proceed individually or that they shared common legal issues, and they couldn't show

that their class counsel was adequate based on their counsel's knowledge of applicable law and counsel's repeatedly asking the court to push back deadlines or reschedule discovery matters based on unavailability. The case is *Abikar v. Bristol Bay Native Corp.*, 2018 BL 465004, S.D. Cal., No. 3:17-cv-01036-GPC-AGS, 12/14/18.

[Case: Wage & Hour/Rest Periods \(N.D. Ill.\)](#)

A collective bargaining agreement between a union and Mondelez Global, which permitted employees to work seven days a week, doesn't require the company to violate an Illinois law guaranteeing employees one day of rest out of seven, because the law doesn't prohibit employees from voluntarily waiving that right. The case is *Mondelez Glob. LLC v. Machinists Local Lodge 1202*, 2019 BL 123, N.D. Ill., No. 17 C 8628, 1/2/19.

[Case: Discrimination/Arbitration \(D.N.J.\)](#)

Several AT&T employees must arbitrate their age-discrimination claims against the company. The court found that the employees accepted the terms of an arbitration agreement by receiving notice of it, clicking on a link, and failing to opt out before the deadline provided, and that there was a valid bargained-for-exchange, because the agreement mutually obligated the employees and the company to arbitrate employment disputes. The case is *Horowitz v. At&T Inc.*, 2019 BL 288, D.N.J., No. 3:17-cv-4827-BRM-LHG, 1/2/19.

[Case: Discrimination/Discharge \(9th Cir.\)](#)

An X-ray technician couldn't show that a hospital fired him because of his age rather than for his theft of patient valuables during x-ray examinations. No other employee was accused of theft, and the technician had been accused of theft on four prior occasions and received a final written warning notifying him that failure to follow the protocol could result in his firing. The case is *Contreras v. George L. Mee Mem'l Hosp.*, 2019 BL 343, 9th Cir., 17-16598, unpublished 1/2/19.

[Case: Labor Relations/Arbitration \(Cal. Ct. App., 3d Dist.\)](#)

Save Mart Supermarkets, Inc. can't compel three former employees to arbitrate claims that they were required to wear degrading safety vests because of their

medical conditions. The employer argued that it would defend the claims based on custom and practice endorsed by a union, but the governing labor contract doesn't have to be interpreted to make out those defenses, and the claims are based entirely on a nonnegotiable state-law policy against discrimination. The case is *Rymel v. Save Mart Supermarkets, Inc.*, 2018 BL 482610, Cal. Ct. App., 3d Dist., No. C085886, 12/31/18.



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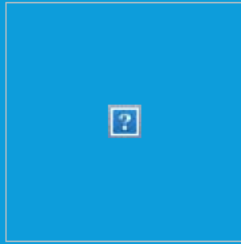
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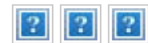
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From: [Bloomberg Law Daily Labor Report](#)
To: [Ring, John](#)
Subject: First Move: Congress Begins New Session • Nominee Waiting Game Restarts
Date: Thursday, January 3, 2019 7:10:18 AM



What you need to know to start your day.

Congress Begins New Session • Nominee Waiting Game Restarts



By [Patricio Chile](#)

THE 116TH CONGRESS IS OPEN FOR BUSINESS

A new session of Congress starts today with lawmakers and the White House still trying to come up with an agreement to end a partial government shutdown. Chris Opfer reports on some of the top labor and employment agenda items in the new year.

Minimum wages and LGBT discrimination protections are likely to highlight the legislation introduced by Democrats, who will also ramp up Trump administration oversight when they regain control of the House. Republican leaders in the Senate will again turn their attention to trying to move nominees for various administration posts.

TRUMP NOMINEE WAITING GAME STARTS FRESH

Senate lawmakers didn't reach a deal on pending nominations for leadership roles at the Labor Department and other agencies, which means the process for getting those jobs filled starts over when a new Congress is seated today, Tyrone Richardson [reports](#).



The U.S. Senate shut down without a deal to confirm many Trump nominees, including some key Labor Department picks.

Photographer: Andrew Harrer/Bloomberg

Those still waiting include Cheryl Stanton (Wage and Hour Division), Scott Mugno (Occupational Safety and Health Administration), and Gordon Hartogensis (Pension Benefit Guaranty Corporation). It's not clear whether President Donald Trump also will renominate Mark Gaston Pearce for the National Labor Relations Board. Meanwhile, Paige Smith [reports today](#) that the Equal Employment Opportunity Commission now doesn't have enough confirmed members for a quorum.

OTHER STORIES WE'RE WATCHING

- The soon-to-be renamed **House Committee on Oversight and Reform** will oversee both the government and the private sector to better reflect its

“true jurisdiction,” Rep. Elijah Cummings (D-Md.), the committee’s incoming chairman, said Jan. 2. The panel “will investigate waste, fraud, and abuse” in government along with issues such as “the escalating prices of prescription drugs” and the opioid crisis, he said. We’re following the developments.

- It’s the time of year when many employers analyze what they pay employees to make sure they are paid fairly. In a Bloomberg Law Insight later today, Jonathan A. Segal, partner with Duane Morris, reveals eight common mistakes employers make when conducting their **pay equity** evaluations.
- The new year brings paid **parental leave** to New Mexico’s largest city, as well as to Kansas court employees, and New York employers face a minimum wage increase, with more to come. [Read more](#) in our “States of Work” weekly roundup of state and local labor and employment developments.
- **ADP** issues its December **employment report** at 8:15 a.m.
- The **Employment and Training Administration** puts out its weekly **job claims** report at 8:30 a.m.
- The **Institute for Supply Management** releases its December **manufacturing** report at 10 a.m.

AROUND THE WEB

- Banks and credit unions that cater to **federal workers** are readying **financial assistance**, including payroll advances and loans, for customers as the government shutdown continues, [CNN reports](#).
- A new Minnesota law taking effect in 2019 will help **first responders** dealing with **post traumatic stress disorder** get coverage through their workers’ compensation, [Fox 9 in Minneapolis reports](#).
- U.S. retailers are investing in technology and redesigned stores that can help improve **worker efficiency** amid a tight labor market, [the Associated Press reports](#).
- While workers in Vermont and New York enjoyed **pay raises** this New Year’s Day, some workers in New Hampshire say they’re struggling as the **minimum wage** in that state has lagged behind its neighbors, Burlington, Vt.’s [WCAX 3 reports](#).

For all of today’s Bloomberg Law headlines, visit [Daily Labor Report](#)



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From: [Martin, Andrew](#)
Subject: Legal News FYI 01-03-19
Date: Thursday, January 3, 2019 8:52:43 AM
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Thursday, January 3, 2019

Congress Begins New Session • Nominee Waiting Game Restarts

BloombergLaw - Daily Labor Report 03 Jan 2019 07:06

By Patricio Chile The 116 th Congress Is Open for Business A new session of Congress starts today with lawmakers and the White House still trying to come up with an agreement to end a partial government shutdown. Chris Opfer reports on some of the top...

Trump Labor Picks Still Sidelined by Senate Inaction

BloombergLaw - Daily Labor Report 03 Jan 2019 06:36

Congress • Failed to reach confirmation deal this session • Trump must renominate choices for DOL, other agencies By Tyrone Richardson President Donald Trump will have to renominate several picks for posts in the Labor Department and other agencies, or...

New Congress to Take Up Minimum Wages, LGBT Discrimination

BloombergLaw - Daily Labor Report 03 Jan 2019 05:57

• Little expectation for bipartisanship on labor issues • House hearings to put Trump policy moves under microscope By Chris Opfer Lawmakers return to Congress with an eye on 2020, and that could shape labor policy in the new legislative session. Once...

NLRB cites bargaining violation by Kaiser; sets hearing

Daily Republic (Fairfield, CA) 02 Jan 2019 22:40

FAIRFIELD – The National Labor Relations Board has cited a bargaining violation against Kaiser Permanente and set a hearing before an administrative law judge in March. Labor representatives called the NLRB decision an “indictment” of Kaiser for “wrongly...

NLRB Must Decide Union Lobbying Fee Row, DC Circ. Hears

Employment Law360 02 Jan 2019 21:53

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Advocacy Group Pushes for NLRB Ruling in Long-Running Fee Case

BloombergLaw - Daily Labor Report 02 Jan 2019 15:27

• Original ruling thrown out due to Noel Canning decision • NLRB's delay in case called unreasonable By Robert lafolla A conservative advocacy group asked a federal appeals court to force the National Labor Relations Board to finally decide a...



Legal News FYI monitors news, cases, and legislative developments of interest to the NLRB. To be added to or removed from the distribution list contact Andrew Martin. Please note that these are external links and the Agency takes no responsibility for their content.

From: [Morning Shift](#)
To: [Ring, John](#)
Subject: POLITICO's Morning Shift: Talking to a wall — Labor's New Year's checklist — Too male, too white?
Date: Thursday, January 3, 2019 10:02:56 AM

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2018 Newsletter Logo: Morning Shift



01/03/2019 10:00 AM EDT

By REBECCA RAINEY (rrainey@politico.com; [@RebeccaARainey](#))

With help from Alex Panetta

Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click

[here](#).

QUICK FIX

The 116th Congress gavel in today. Democratic control of the House means there's a new name for the House Committee on Education and the Workforce — it's called, once again, "Education and Labor" — but the first-day excitement pretty much ends there. No action is expected on the shutdown.

— **The Labor Department will release** soon some long-anticipated regulations, but not its joint employer rule.

— **Allegations of harassment and sexism** in Sen. [Bernie Sanders](#)' 2016 presidential campaign could hamper his not-yet-declared 2020 bid.

— **DOL's application portal** for temporary worker visas was still down Wednesday after crashing due to an unprecedented number of requests.

GOOD MORNING! It's Thursday Jan. 3, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to rrainey@politico.com, thesson@politico.com, ikullgren@politico.com and tnoah@politico.com. Follow us on Twitter at [@RebeccaARainey](#), [@tedhesson](#), [@IanKullgren](#) and [@TimothyNoah1](#).

DRIVING THE DAY

TALKING TO A WALL: Congressional leaders were no closer to reopening nearly one-quarter of the federal government after meeting Wednesday with President Donald Trump, POLITICO's Sarah Ferris and Burgess Everett report. Democrats plan to pass a handful of House bills today to end the shutdown, but Senate Republican leaders have said they won't consider them until the president gives them the high sign. The group will meet again Friday. More [here](#).

The extended impasse over a southern border wall has trickled down to the already backlogged immigration system, Nick Miroff reports for The Washington Post. E-Verify services are currently unavailable, slowing the hiring process for some employers trying to comply with the law.

Immigration judges "all received furlough notices on Dec. 26," the National Association of Immigration Judges told the Post, but many have since been

instructed to return to court and are working without pay. Miroff reports that because of the the backlog of cases, "the hearings that have been canceled in recent days cannot be rescheduled until 2021 or beyond." More from the Post [here](#).

ON TAP

NEW YEAR'S REG CHECKLIST: December came and went without a proposed DOL [rule](#) defining joint employment under the Fair Labor Standard Act, or a proposed DOL [rule](#) altering how employers calculate "regular" and "basic" pay in making overtime payments so that businesses enjoy "more flexibility in the compensation and benefits packages they offer to employees." Both were supposed to be released last month, so keep an eye out.

The comment period ends Thursday on a DOL [proposal](#) to allow states to drug-test a broad swath of applicants for unemployment insurance.

The NLRB proposed in September [its own rule](#) defining joint employment under the National Labor Relations Act. The comment period for that rule ends Jan. 14.

A rule expanding employers' ability to claim a [moral or religious exemption](#) to providing cost-free contraceptive coverage under Obamacare is slated to take effect Jan. 14. However, a California federal court will [hold a hearing](#) Jan. 11 on several states' motion to block the rules. A federal appellate panel [last month narrowed](#) an injunction against enforcing the rules, limiting it only to the five states that originally challenged them.

A new proposed overtime regulation is due in March. A 2016 Obama administration [rule](#) doubled (to \$47,476) the salary threshold under which virtually all workers were guaranteed overtime pay, but was struck down in district court before it took effect. Labor Secretary Alexander Acosta has suggested an inflation-adjusted threshold at about \$33,000.

The formulation of an OSHA proposed rule to reduce workplace violence will be considered by a business review panel in March.

OSHA's final regulation rolling back an Obama-era requirement that employers submit injury and illness records to the agency electronically is expected in June, but it could come earlier. Former OSHA deputy assistant secretary Jordan Barab noted in his blog [Confined Space](#) that the agency submitted the rule to OMB for review in December — three months ahead of schedule.

A separate OSHA rule rolling back certain requirements for workers exposed to beryllium in the construction and shipyard sectors is also due in June.

2020 WATCH

TOO MALE, TOO WHITE: If Sen. [Bernie Sanders](#) (I-Vt.) doesn't address diversity and harassment issues that plagued his 2016 presidential campaign, they could haunt his expected 2020 bid, Sydney Ember and Katie Benner report for The New York Times. Women on the Sanders' campaign were asked "to sleep in rooms along with male co-workers they didn't know," the Times reports, and significant pay disparities existed between female and male workers.

"I did experience sexual harassment during the campaign, and there was no one who would or could help," Samantha Davis, a former director of operations in Texas and New York, told the Times. Jeff Weaver, Sanders' 2016 campaign manager, said "anybody who committed harassment on the campaign would not be asked back," but lamented, "Was it too male? Yes. Was it too white? Yes."

POLITICO's Alex Thompson [reported](#) late last month that more than two dozen workers on Sanders' 2016 presidential campaign were seeking a meeting with the senator and his top political advisers to discuss such issues "to mitigate the issue in the upcoming presidential cycle." More from POLITICO [here](#) and more from the Times [here](#).

IMMIGRATION

DOL H-2B SYSTEM DOWN: DOL's computer system to handle applications for temporary worker visas crashed Tuesday, the Employment and Training Administration said Wednesday. The iCERT system "had an unprecedented demand for H-2B certifications with more than 97,800 workers requested in pending applications for the 33,000 available visas," according to ETA. The Department says it will provide at least 24 hours' notice before the iCERT system is re-started; another update is expected today. Read the announcement on the crash [here](#).

LONGER WAITS AT THE BORDER: The longer the partial government shutdown continues, the longer some travelers will have to wait to cross the Canada-U.S. border. A Canadian official told POLITICO that the shutdown affects the processing of trusted-traveler cards under the NEXUS program that speed up

border passage. The website for [NEXUS Enrollment Centers](#) warns visitors it might not be managed actively during the shutdown.

But people awaiting most types of U.S. work visas should be shielded from the shutdown. U.S. Customs and Immigration spokesman Michael Bars said pay for most USCIS employees is funded through application fees. An exception is those who work in the [E-Verify](#) program; they are furloughed because their program's funding has expired. "All USCIS offices remain open and all applicants should attend interviews and appointments as scheduled," Bars said.

LABOR BOARD

KAISER HIT BY NLRB: The NLRB charged Kaiser Permanente Friday with refusing to negotiate on a contract for 85,000 employees in seven states and D.C. The action grew out of a complaint filed by the Service Employees International Union in May (more on that [here](#)). The healthcare company is required to respond to the unfair labor practices charge by Jan. 11. A hearing is scheduled for March 19 in California. Read the NLRB indictment [here](#).

KOCH NETWORK TO PUSH ON IMMIGRATION: The Koch donor network will push in 2019 for permanent legal status for so-called Dreamers, according to an email obtained by Time. Philip Elliott writes that the Koch groups' efforts may put added pressure on congressional and gubernatorial candidates looking for cash just as the 2020 campaign season begins. But the Kochs won't target 2020 presidential candidates. More from Time [here](#).

COMINGS AND GOINGS: DOL announced Wednesday that the Assistant Secretary of Labor for Public Affairs, Jeffrey Grappone, is resigning effective today. He moves to the Senate Republican Conference, where he'll serve as deputy staff director.

The United Steelworkers Assistant Director of Health, Safety and Environment, Jim Frederick will retire from the union effective in February.

COFFEE BREAK

— "Yes, 2019 Is the Year You Were Worrying About," from [POLITICO Magazine](#)

— "How women took over the military-industrial complex," from [POLITICO](#)

- "Trump blames court ruling for preventing DACA deal," from [POLITICO](#)
- "Young immigrants seeking refuge from abuse face denials," from [The Associated Press](#)
- Opinion: "Trump could reopen the government and build a lasting legacy all at once," from [The Washington Post](#)
- Opinion: "Why Republicans Should Support Immigration," from [The New York Times](#)
- "Elizabeth Warren says 'government has been bought and paid for' by big business. Political scientists say she's got a point." from [The Washington Post](#)
- "'A Pumping Conspiracy': Why Workers Smuggled Breast Pumps Into Prison," from [The New York Times](#)
- "Julie Sweet of Accenture Could See Her Future. So She Quit Her Job." from [The New York Times](#)

THAT'S ALL FOR MORNING SHIFT!

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GovExec Today

January 3, 2019



[After Failed White House Meeting, Republicans Suggest Shutdown Agreement Could Take 'Weeks'](#) // Eric Katz

Trump rejects Democrats' offer to reopen government while punting on border, saying agencies could be closed "a long time."

[Frozen Locality Pay, a Possible Pay Raise for Political Appointees and More](#) // Erich Wagner

The appointee freeze has been lifted, but could be re-instituted in legislation set for a vote Thursday.

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[Compelling Benefits, Common Misconceptions: Putting Intelligent Automation To Work For Federal](#)

What, exactly, is intelligent automation (IA) - and what specific ways can agencies apply it? Who's "getting it right" when it comes to IA? And, what are some of the most common misconceptions that may limit the effectiveness and success of IA initiatives?

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[Federal Workforce's Largest Union Sues Over Unpaid Labor During Shutdown](#) // Erich Wagner

Litigation from previous shutdowns required the government to pay damages, although payouts took years.

[Stop-Work Orders Beginning to Go Out to Contractors](#) // Charles S. Clark

Companies wrestle with "highly fluid" shutdown situation.

[TSA Whistleblower Disclosures Prompt Two Aviation Security Probes](#) // Charles S. Clark

Office of Special Counsel orders DHS to examine breakdowns in food and drug handling on planes.

[Most TSP Funds Take a Nosedive in December](#) // Erich Wagner

All but two of the Thrift Savings Plan's investment offerings ended 2018 on a sour note.

[Democrats Announce Plan to Reopen Government, Including a Pay Raise for Feds](#) // Eric Katz

Republicans, White House not expected to go along with the proposal.

[Meet the New \(Acting\) Defense Secretary](#) // Uri Friedman

With no military experience and just a year and a half in government, the former Boeing executive Patrick Shanahan has yet to develop a foreign-policy vision of his own.

[If You're Over 50, Chances Are the Decision to Leave a Job Won't be Yours](#) // Peter Gosselin

A new data analysis by ProPublica and the Urban Institute shows more than half of older U.S. workers are pushed out of longtime jobs before they choose to retire, suffering financial damage that is often irreversible.

[What the Shutdown Means for Shared Services](#) // Jack Corrigan

Some of the largest shared services providers are still waiting to be funded.

['Peace Cross' Case Could Affect Hundreds of Monuments, States Say](#) // Laura Maggi

States and localities argue the U.S. Supreme Court should use the case of the 40-foot cross to provide "clear guidance" on war memorials that use religious motifs.

[Seizing the Opportunity to Close the Cybersecurity Skills Gap](#) // Dave Egts

Here's how the public sector could get a leg up on competing for cybersecurity talent.

[GOP AGs Weigh in Against States in Census Case Before Supreme Court](#) // Bill Lucia

It's one of several legal battles over the Trump administration's controversial decision to ask about citizenship on the 2020 census.

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What, exactly, is intelligent automation (IA) - and what specific ways can agencies apply it? Who's "getting it right" when it comes to IA? And, what are some of the most common misconceptions that may limit the effectiveness and success of IA initiatives?

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TOP STORIES

[Union Fees Refund Case Needs More Work After SCOTUS Ruling](#)

By Jon Steingart

Public employees in California will get another chance to make their case that they're entitled to refunds of union fees they were required to pay as a condition of employment, following a Ninth Circuit ruling that revived their class action.

[Ashley Furniture Worker to Get Sexual Harassment Trial](#)

By Patrick Dorrian

A jury must decide whether an Ashley Furniture employee in Mississippi lost accounts and commissions and was fired because she spurned her store manager's persistent sexual advances, a federal judge ruled.

[Phillips 66 Won't Wade Into LGBT Debate in Defense of Bias Claim](#)

By Robert Iafolla

Phillips 66 is headed to a federal appeals court to defend itself against transgender discrimination claims, but the Texas-based energy company won't argue that bias based on gender identity is legal.

[Sens. Romney and Braun Join Republicans on HELP Committee \(1\)](#)

By Tyrone Richardson

Sens. Mitt Romney and Mike Braun are joining other Republicans on the Senate labor and pensions committee.

DISCRIMINATION

[FEMA Chief Can't Make Sex Discrimination Case Against Agency](#)

By Daniel Seiden

A district court rejected a former Federal Emergency Management Agency branch chief's claims that the agency discriminated against her on the basis of sex in violation of a civil rights statute.

[Trump Administration Wins Ruling in Transgender-Ban Lawsuit \(3\)](#)

By Erik Larson

A federal appeals court handed U.S. President Donald Trump his first victory in an effort to ban many transgender Americans from serving in the military, lifting a court's injunction against the new policy.

[Synovus Bank Worker With Anger Disorder Loses Bias Claim](#)

By Patrick Dorrian

Synovus Bank didn't violated federal disability bias law when it fired a network support analyst in Georgia who told a female teller that he hates working with women, a federal judge ruled.

[Jewish Morningstar Employee Claims Bias, Retaliation \(1\)](#)

By Patrick Dorrian

A Morningstar desktop support manager regularly directed anti-Semitic remarks at a Jewish employee, who was later fired because of his religion and for complaining about the bias, a new federal lawsuit charges.

WAGE & HOUR

[Citrus Pickers Lose Bid for Wage Class Action Suit](#)

By Brian Flood

Seasonal field workers who accuse Wonderful Citrus Packing LLC of wage law violations won't be able to make their case a class action, the U.S. District Court for the Eastern District of California ruled.

[Firebirds Wage Class Action Settlement Gets Preliminary Approval](#)

By Brian Flood

A class action settlement between restaurant chain Firebirds and its servers was preliminarily approved by the U.S. District Court for the District of Kansas.

LABOR RELATIONS

[Colo. Springs Firefighters Must Change City Charter to Bargain](#)

By Paige Smith

Firefighters in Colorado Springs want to collectively bargain with the city, but first they must change a fundamental city document.

BUSINESS OF LAW

[Courts Run Out of Cash Next Friday. Here's What Happens Then \(1\)](#)

By Erik Larson

Companies that turn to the federal courts to resolve fights with rivals and customers may find themselves in limbo if the government shutdown continues beyond next week.

HUMAN RESOURCES

[HR Buzz: AI Timidity Risky, No Heir for CFO, Scottsdale or Bust](#)

By Cathleen O'Connor Schoultz

Artificial intelligence and machine learning are here to stay and will disrupt companies that aren't ready. That's the message of a new report from KPMG International. But while some HR leaders have their arms wide open, 60 percent of HR executives think AI will kill more jobs than it creates, according to its Future of HR Survey 2019. About the same proportion of CEOs (62 percent) believe the reverse--that AI will create net jobs, according to the report.

HEALTH CARE & BENEFITS

[GoJet Pilot Gets \\$375K in FMLA Case, Front Pay Still Up in Air](#)

By Patrick Dorrian

A diabetic former GoJet Airlines LLC pilot is entitled to \$375,810 for the airline's violation of his rights to protected medical leave, a federal judge ruled.

[DOL Inks \\$502K Deal With Retirement Plan Trustees](#)

By Jacklyn Wille

The Labor Department secured a \$502,784 settlement with the trustees of a picture framing company's profit sharing plan.

[Labor Dept. Poised to Advance Suit Over \\$40M Stock Deal](#)

By Jacklyn Wille

A Hawaii architectural firm accused of mishandling a \$40 million stock transaction got bad news Jan. 3, when a federal judge said she was inclined to allow the Department of Labor's suit to proceed.

[Chevron Workers Denied Rehearing of 401\(k\) Class Loss](#)

By Jacklyn Wille

A group of Chevron Corp. workers failed to convince a federal appeals court to

reconsider its decision rejecting their claims that the oil company filled its 401(k) plan with expensive and poorly performing funds.

[Renco Pledges \\$78M to Steelworker Pension](#)

By Jacklyn Wille

Renco Group Inc. will voluntarily pay more than \$78 million to the Steelworkers Pension Trust without a court order, the company told a federal judge.

SAFETY & HEALTH

[Truck Driver's Fatal Crash Not Fault of Parent Company: Judge](#)

By Fatima Hussein

A truck driver's estate couldn't claim the parent company of his employer was responsible when he fell asleep at the wheel and died in a crash, a federal judge in Pennsylvania ruled.

[Transportation Top Cause of Job Deaths in Texas, California](#)

By Karn Dhingra

Transportation-related accidents are the leading cause of workplace deaths in the U.S.'s two most populous states.

ALSO IN THE NEWS

[Feds' Paychecks to Stop Week of Jan. 14, Union Official Says](#)

By Louis C. LaBrecque

Most federal employees affected by the partial government shutdown that began Dec. 22 will begin missing paychecks the week of Jan. 14, Jacqueline Simon, public policy director at the American Federation of Government Employees, said during a press call Jan. 4.

[House OKs Committee Name Change to Education and Labor](#)

By Tyrone Richardson

Democrats Jan. 3 kicked off control of the House in the 116th Congress by passing a name change for the panel once known as the Education and the Workforce Committee.

[Scott Elected Chairman of House Education and Labor Committee](#)

By Tyrone Richardson

Rep. Bobby Scott was selected by the House Democratic Caucus Jan. 4 to chair the Education and Labor Committee.

[U.S. Payrolls Rise 312,000, Wages Accelerate in Jobs Blowout \(2\)](#)

By Shobhana Chandra

U.S. employers added the most workers in 10 months as wage gains accelerated and labor-force participation jumped, reflecting a robust job market that nevertheless faces mounting risks in 2019.

[Restaurants Are Scrambling for Cheap Labor in 2019 \(1\)](#)

By Leslie Patton

Every autumn, retailers hire large numbers of seasonal workers to handle the rush of holiday business. Then, after the new year kicks in, many of those temps typically rejoin the ranks of low-skilled job seekers, eager for work and often willing to accept meager pay.

[Black Men Make Strides in Hollywood, but Women Still Struggle](#)

By Rob Golum

African-American men made measurable progress in gaining top jobs in Hollywood last year, though women—and particularly non-white women—continue to miss out, according to the latest annual survey from the University of Southern California.

[Texas Snaps 2-Year Streak of Oilfield Job Growth as Crude Slides](#)

By David Wethe

Jobs in the Texas oil patch dropped for the first time in almost two years, according to the state's workforce commission.

LATEST CASES

[Case: Discrimination/Exhaustion of Administrative Remedies \(W.D. Pa.\)](#)

A Pennsylvania federal court will dismiss a former business manager's employment discrimination claims against a Pennsylvania school district, because the manager admitted that he didn't comply with the administrative procedures necessary to bring his claims under the Pennsylvania Human Rights Act. Additionally, though he said that he will file an amended complaint next month, he must seek permission from the court to do so. The case is *Kowal v. Ferndale Area Sch. Dist.*, W.D. Pa., 3:18-cv-181, 1/3/19.

[Case: Discrimination/Discharge \(W.D. Pa.\)](#)

A former head wrestling coach at the University of Pittsburgh can proceed with a claim under 42 U.S.C. § 1981 that he was fired because of race discrimination. The university argued that he shouldn't be allowed to move forward with this claim because he didn't explicitly reference 42 U.S.C. § 1983, which sets forth a mechanism for suing state actors for constitutional and statutory violations, but under a notice pleading standard, he didn't have to expressly invoke § 1983, the court said. The case is *Peters v. Univ. of Pittsburgh*, W.D. Pa., 2:18-cv-732, 1/4/19.

[Case: Wage & Hour/Settlement Agreements \(M.D.N.C.\)](#)

Uber and drivers who claim the company failed to pay them minimum wages and overtime established that their \$1.3 million settlement of the claims is fair and reasonable, because they based it on data of the drivers' working hours, and the drivers conceded the settlement would avoid the risk of a jury finding they were properly classified as independent contractors exempt from wage requirements. The case is *Hood v. Uber Techs., Inc.*, 2019 BL 1184, M.D.N.C., 1:16-CV-998 1:16-CV-998, 1/3/19.

[Case: Discrimination/Hiring \(E.D. Pa.\)](#)

A black trainee for a permanent marketing position with Progressive Business Publications, Inc. couldn't proceed on a claim that she was let go before the end of training because of race discrimination. Although she was the only black candidate in her training group, the other candidates also received scores below the minimum threshold and none were promoted to a permanent position, and the fact that the branch manager may have referred to black people as "ghetto" didn't indicate that the manager chose not to make the trainee permanent because of discrimination, the court said. The case is *Stewart v. Progressive Bus. Publs. Inc.*, E.D. Pa., 17-CV-4122, 1/2/19.

[Case: Disability Discrimination/Reasonable Accommodation \(W.D. Wis.\)](#)

A field auditor for the Wisconsin workforce development agency didn't show that her request to gradually return from part-time to full-time work was a reasonable accommodation for her back injury, because she had already been permitted to work a reduced schedule for over a year prior to her request, and she didn't propose a timeline for how long it would take for her to return to a full-time schedule, which was an essential function of her job. The case is *McMannes v. Wis. Dep't of Workforce Dev.*, 2019 BL 1602, W.D. Wis., 17-cv-758-jdp, 1/3/19.

[Case: Individual Employment Rights/Arbitration \(D.N.J.\)](#)

Two AT&T employees alleging that their employer had a plan to illegally replace its older employees with younger workers by 2020 must individually arbitrate their age discrimination claims. They didn't opt out of AT&T's alternative dispute resolution process when given the chance in emails reminding them to review the arbitration agreement, that described the process and included a deadline to decline to participate. The fact that the employees clicked on a hyperlink in the emails that took them to the arbitration agreement was enough to bind them to it, even though they may have failed to read its contents. The case is *Horowitz v. At&T Inc.*, 2019 BL 288, D.N.J., No. 3:17-cv-4827-BRM-LHG, 1/2/19.

[Case: Disability Discrimination/Reasonable Accommodation \(M.D.](#)

[Ga.\)](#)

A former network support analyst for a Columbus, Georgia, bank may not move forward with his claim that the bank failed to accommodate his request to not answer customer service calls as an accommodation for his psychological disorders, because he didn't dispute that answering the calls was an essential function of his position. The case is *Kassa v. Synovus Bank*, 2019 BL 1511, M.D. Ga., No. 4:18-cv-2 (CDL), 1/3/19.

[Case: Discrimination/Hostile Work Environment \(N.D.N.Y.\)](#)

A female former officer for the Manlius Police Department in New York can't move forward with her hostile work environment claim against the town's fire department chief or a firefighter. Although neither individual was the officer's employer, the court said they could potentially be liable under New York State law if they actively participated in the conduct that gave rise to her claim, but it said that her allegations that the firefighter was aware of a hostile environment and that the chief complained to her employer at the firefighter's urging to worsen the environment were insufficient to show they discriminated against her because of her sex. The case is *Wolongevicz v. Town of Manlius*, 2019 BL 1574, N.D.N.Y., No. 5:17-cv-00933 (BKS/DEP), 1/3/19.

[Case: Discrimination/Discharge \(N.D.N.Y.\)](#)

A black former employee for Medical Answering Service can proceed on his claim that he was subjected to race discrimination, because in his complaint, he alleged that he was fired for—what he alleges was a false accusation—of sexual harassment while a white co-worker was merely warned for similar behavior. However, he can't proceed on his sex discrimination claim stemming from the same incident, because the fact that his accuser was a woman, while his co-worker's accuser was a man, does nothing to change the fact that the alleged harassers were both men. The case is *Robinson v. Med. Answering Serv.*, 2019 BL 1643, N.D.N.Y., No. 1:18-CV-1222 (GTS/DEP), 1/3/19.

[Case: Individual Employment Rights/First Amendment Retaliation \(N.D.N.Y.\)](#)

A volunteer fire department for Manlius, New York can't avoid a former police officer's First Amendment retaliation claim on the basis that as a "pure

volunteer organization" the fire department isn't a state actor for purposes of legal liability. Even if the department's assertions were credible, fire protection is a function so traditionally associated with sovereignty that its performance by an otherwise private entity might constitute state action, the court said. The case is *Wolongevicz v. Town of Manlius*, 2019 BL 1574, N.D.N.Y., No. 5:17-cv-00933 (BKS/DEP), 1/3/19.

[Case: Discrimination/National Origin Discrimination \(E.D. Pa.\)](#)

A former employee of Guinean descent can proceed on her claim that Commonwealth Support Services subjected her to national origin discrimination, because she alleged that her hours were reduced while the hours of employees of Sierra Leonean descent were increased, and those facts are sufficient to state a claim at this point in the proceedings. The case is *Diallo v. Commonwealth Support Servs.*, E.D. Pa., No. 18-1517, 1/3/19.

[Case: Discrimination/Sexual Harassment \(N.D. Miss.\)](#)

A female former employee can go to trial on her claim that Ashley Furniture Home Store should be held responsible for alleged sexual harassment when her immediate supervisor propositioned her for sex and took away her sales and commissions and, eventually, fired her after she rejected his sexual advances. The employee stated that she never received training on how to prevent or report sexual harassment, the company didn't investigate her complaint for almost three months after she first reported it, and though the employee was no longer with the company, she had also reported that the supervisor had acted inappropriately towards a co-worker. The case is *Ray v. The Dufresne Spencer Grp., LLC*, 2019 BL 1762, N.D. Miss., 1:17-CV-71-RP, 1/3/19.

[Case: Wage & Hour/Overtime \(E.D. Pa.\)](#)

A delivery driver for a Pennsylvania appliance retailer gave enough information to make a claim for unpaid overtime due to his misclassification as an independent contractor, because he said that he was compensated a flat rate for each delivery, regardless of how many hours he worked, and he listed his estimated overtime hours for specific weeks. The case is *SeYoung Ra v. Gerhard's, Inc.*, 2019 BL 1544, E.D. Pa., No. 17-5211, 1/3/19.

[Case: Discrimination/Discharge \(S.D. Tex.\)](#)

A black cost controller may not proceed with her claim that an engineering and construction company in Texas fired her because of her race, rather than for poor work performance. The same manager who hired the controller fired her and she didn't show that her race was a factor in the firing decision, the court said. The case is Mathiew v. Subsea 7 Us LLC, 2019 BL 1607, S.D. Tex., No. 4:17-CV-3140, 1/2/19.

[Case: Discrimination/Discharge \(N.D. Okla.\)](#)

A quality assurance analyst of African descent couldn't show that Check-6 Training Systems didn't convert her from a contractor to an employee because of her race rather than the company's financial and legal difficulties. She didn't offer any evidence to contradict the company's assertions that the non-conversion was due to the company's downsizing and hiring freezes due to litigation the company was involved in with a former employee, and her allegation that another employee made racially offensive comments didn't help her case, because that employee wasn't the decision maker as to the analyst's employment status. The case is Pullum v. Check-6 Training Sys., Inc., 2019 BL 1690, N.D. Okla., 16-CV-716-GKF-FHM, 1/3/19.

[Case: Wage & Hour/Preemption \(E.D.Cal.\)](#)

Employees of a California construction company may have their state-law claims for unpaid overtime and other wage violations heard by a state court, rather than a federal court. The employees' claims aren't preempted by the federal law governing collective bargaining agreements, because their claims are based only on the state laws, and they don't dispute any terms of their agreement. The case is Davalos v. A. Teichert & Son, Inc., 2019 BL 2004, E.D. Cal., No. 2:18-cv-02694-KJM-KJN, 1/2/19.

[Case: Discrimination/Arbitration \(Mich. Ct. App.\)](#)

A black employee fired from DTE Energy Corporate Services, LLC was properly denied his request to vacate an arbitrator's award in favor of the company, an appeals court said. The employee argued that the arbitrator erred by only recognizing two ways that he could prove race discrimination, but the

legal tests the arbitrator applied were based on the theories of recovery the employee advanced during the arbitration proceedings, and the court found no support in the text of the arbitration agreement for the employee's argument that the arbitrator exceeded his authority by not providing legal citations. The case is *Hunter v. DTE Energy Corp. Servs., LLC*, 2019 BL 2100, Mich. Ct. App., 339138, 1/3/19.

[Case: Individual Employment Rights/Drug Testing \(5th Cir.\)](#)

A tenured employee of a Louisiana parish with "safety sensitive" job duties who tested positive for marijuana during a random drug test wasn't denied due process or constructively discharged, even though the vial that contained his urine specimen didn't have a seal where he could initial and he never initialed it, and an assistant spoke to him about the positive results of his test rather than the medical review officer. The employee didn't show that the parish wanted to avoid pre-termination hearings when it offered him the opportunity to retire instead of being terminated, and he had adequate opportunities to be heard after he was discharged. The case is *Parks v. Terrebonne Par. Consol. Gov't*, 2019 BL 1126, 5th Cir., 18- 30135, 1/3/19.

[Case: Discrimination/Exhaustion \(N.D. Ill.\)](#)

A United States born employee who self identifies as "a tribal member of the Aboriginal Republic of North America/International Indigenous Society" and not a U.S. citizen may not proceed with his claim that a rail way company in Illinois discriminated against him because of his self-identified national origin when it refused to correctly categorize him as a non-citizen "U.S. National." The employee didn't exhaust his administrative remedies because he waited more than the requisite 300 days from the date of the refusal to file a claim with the EEOC, the court said. The case is *Lewis v. BNSF Ry.*, 2019 BL 1462, N.D. Ill., No. 14-CV-07171, 1/3/19.

[Case: Individual Employment Rights/Defamation \(Ind. Ct. App.\)](#)

An office manager for a charter school who was responsible for collecting money for extra-curricular activities was fired because student funds were not properly deposited in school's extracurricular activities account, and a local newspaper reported that auditors found money she was responsible for

handling was missing. The office manager claimed she was defamed by the article and by comments made by the principal at a school staff meeting, but a state court ruled that the school didn't violate her employment contract by discharging her, because she was always an at-will employee. The case is Robinson v. 21st Century Charter Sch. at Gary, 2018 BL 483273, Ind. Ct. App., No. 45A04-1710-CT-2441, 12/31/18.

[Case: Labor Relations/Public Employees \(Ohio Ct. App.\)](#)

An arbitrator erred in reinstating a therapeutic program worker who was removed from her employment with a state agency for either slapping or forcibly knocking something out of a client's hand. The arbitrator found that the incident was a first offense and that the discipline wasn't progressive, but she expressly found that some of the worker's conduct fell within the agency's definition of physical abuse, and the labor contract didn't give her authority to modify the termination in such a case. The case is Ohio Office of Collective Bargaining v. Ohio Civil Serv. Emps. Ass'n Local 11, 2018 BL 483851, Ohio Ct. App., 10th Dist., No. 18AP-478, 12/31/18.

[Case: Individual Employment Rights/Arbitration \(S.D.N.Y.\)](#)

Three former Wells Fargo financial advisers will continue with their classwide arbitration of class and collective action claims that Wells Fargo failed to pay them and a putative class overtime as required by New York law and the Fair Labor Standards Act. The bank sought to vacate an arbitrator's award in order to compel the employees to arbitrate their claims individually, but the arbitrator's ruling that the agreement permitted class arbitration even though it didn't mention it explicitly was appropriate, and Wells Fargo's arbitration agreement failed to limit the scope of arbitration to individual proceedings, a federal court said. The case is Wells Fargo Advisors LLC v. Tucker, 2019 BL 449, S.D.N.Y., No. 18 Civ. 6757 (PAE), 1/2/19.

[Case: Discrimination/Equal Pay Act \(E.D. Ark.\)](#)

A female employee for the Pine Bluff School District in Arkansas can go to trial on her Equal Pay Act claim after she offered evidence that she assumed the job duties of a male employee who left the school district but that she was paid less than him. They had different job titles, but the Equal Pay Act doesn't

concern itself with that issue, and there's enough evidence for a jury to find that the employees had substantially equal responsibility but were paid differently. The case is *Brown v. Pine Bluff Sch. Dist.*, 2019 BL 1064, E.D. Ark., 5:18CV00004 JLH, 1/3/19.

[Case: Wage & Hour/Collective Certification \(N.D. Ohio\)](#)

Servers for a country club in Toledo, Ohio, may move forward collectively with their various wage claims, including minimum wages for time they spent on non-tipped duties. They gave enough information to support that they have similar enough claims to argue them together, because one the of the potential class members said he spoke to other servers who said they experienced the same wage payment practices. The case is *McCullen v. Toledo Country Club*, 2019 BL 1862, N.D. Ohio, No. 3:18-cv-276, 1/3/19.

[Case: Discrimination/Hiring \(N.D. Cal.\)](#)

A 55-year-old Chinese professor can't proceed on his claim that his age was the real reason that Stanford University didn't promote him to a full professor job, because he didn't file an EEOC charge and thus didn't comply with the administrative requirements that are necessary before filing suit. Additionally, the court dismissed his claims that he wasn't hired because of bias on the basis of his national origin or race, because his only allegation to support those claims was that his credentials were so impressive that the school must have had a discriminatory motive; he will, however, be able to amend his complaint as to these two claims. The case is *Liqiang Wei v. Michelson*, 2019 BL 787, N.D. Cal., No. 18-cv-04761-HSG, 1/2/19.



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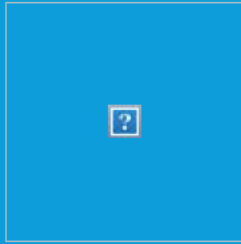
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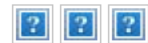
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From: [Bloomberg Law Daily Labor Report](#)
To: [Ring, John](#)
Subject: First Move: High Court Sets Agenda • Transgender Bias Tested
Date: Friday, January 4, 2019 7:09:29 AM



What you need to know to start your day.

High Court Sets Agenda • Transgender Bias Tested



By [Patricio Chile](#)

JUSTICES MULL LGBT RIGHTS, SALARY PETITIONS

The U.S. Supreme Court justices are back in private conference today to select appeals to review or deny. On the agenda are three petitions asking the court to decide whether LGBT workers are protected from discrimination under federal law. Another case before the justices asks if employers can use employees' salary histories to set their pay.

If the court decides to take up any of these cases, orders could come as early as this afternoon. Jon Steingart, Robert lafolla, and Andrew Wallender will keep an eye on developments.

TRANSGENDER BIAS FACES COURT TEST

A federal appeals court next week is set to consider whether federal anti-bias law protects transgender workers. But Phillips 66, the Texas-based energy company accused of discrimination, won't argue that it doesn't, Robert lafolla [reports today](#).



A railroad crossing sign stands in front of the Phillips 66 Wood River Refinery in Roxana, Ill., April 24, 2017.
Photographer: Luke Sharrett/Bloomberg via Getty Images

The company told the U.S. Court of Appeals for the Fifth Circuit that it can win without reaching that issue, so the court called in an outside lawyer to argue that federal law doesn't prohibit discrimination on the basis of gender identity. The company declining to pursue that argument highlights corporate America's concern about being labeled anti-LGBT, even as the Supreme Court is poised to take cases with the potential to decide the scope of federal workplace protections.

OTHER STORIES WE'RE WATCHING

- **Artificial intelligence** and **machine learning** are here to stay and that's good news for companies that embrace change, says a new report from KPMG LLP. Meanwhile Scottsdale, Ariz., and Fayetteville, N.C., are the

best and worst U.S. cities for jobs in 2019. For more, check out this week's "HR Buzz" later today.

- **House Democrats** voted Wednesday to change the name of the Education and the Workforce Committee, rebranding the panel as the **Committee on Education and Labor**. Tyrone Richardson [has the story](#).
- The **Bureau of Labor Statistics** releases its December unemployment and payrolls report at 8:30 a.m.

AROUND THE WEB

- The union representing **Transportation Security Administration** agents at Seattle–Tacoma International Airport said one of their members quit because of the government shutdown and others are considering how long they can work without pay, Seattle's [KIRO 7 reports](#).
- Nearly 300 federal workers in Colorado have filed for **unemployment** as the federal government **shutdown** continues for a 12th straight day, [ABC 7 in Denver reports](#).
- The **Alaska** Department of Labor and Workforce Development said the state is expected to gain jobs in 2019 after three years of losses, [the Anchorage Daily News reports](#).
- **Navy Federal** offered to pay \$4.2 million for county-owned land and create at least 300 jobs as it expands its Beulah, Fla., campus, [the Pensacola News Journal reports](#).

For all of today's Bloomberg Law headlines, visit [Daily Labor Report](#)



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To: [Ring, John](#)
Subject: House votes to reopen government, provide pay raise
Date: Friday, January 4, 2019 5:32:12 AM

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GovExec Today

January 4, 2019



Editor's note: *The partial government shutdown affects more than furloughed feds. Tell us how it is affecting your work and your agency's mission by emailing webmaster@govexec.com.*

[House Votes to Reopen Government, Provide Pay Raise](#) // Eric Katz

Trump says he would veto the measures.

[What the Shutdown Means for Your Retirement](#) // Tammy Flanagan

It affects everything from processing of applications to lump-sum payments for annual leave.

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[Compelling Benefits, Common Misconceptions: Putting Intelligent Automation To Work For Federal](#)

What, exactly, is intelligent automation (IA) - and what specific ways can agencies apply it? Who's "getting it right" when it comes to IA? And, what are some of the most common misconceptions that may limit the effectiveness and success of IA initiatives?

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[Trump Brings Federal Employee Union to White House to Make Case for Shutdown](#) // Eric Katz

Union officials say temporarily forgoing pay is small price to pay for a wall.

[Funded Agencies' Paychecks to Go Out on Time, Despite Shutdown Impacting Largest Payroll Processor](#) // Erich Wagner

Although the National Finance Center is partially funded through Agriculture Department appropriations, it still has enough money and staff to work through the partial government shutdown.

[GOP Senator Blasts Marshals Service for 'Frat' Culture, Details Mismanagement](#) // Charles S. Clark

Some 100 whistleblowers told Judiciary panel of waste, wrongful hiring, retaliation.

[Feds Facing Financial Hardships During the Shutdown Have Some Options for Relief //](#)

Eric Katz

Furloughed employees are pursuing unemployment in much lower numbers than in 2013.

[Trump Instructs Pentagon to Curb Watchdogs' Access to Secret Military Reports //](#)

Charles S. Clark

Transparency groups decry move as hindering the work of inspectors general.

[An Awkward Beginning to Democratic Control of the House //](#) Russell Berman

The shutdown is undercutting the Democrats' moment of triumph, muddling their opportunity to drive the national debate on their own terms.

[Shutdown Roundup: Poop in Parks, Marriage License Delays and Immigration Backups //](#)

Ross Gianfortune

The effects of the appropriations lapse are being felt nationwide.

[Senate Confirms OSTP Director, VA CIO on Final Day //](#) Jack Corrigan

Nobody has permanently served in either role since the beginning of the Trump administration.

[High-Tech Band-Aids for New York's Deteriorating Subway //](#) Michael Grass

"Necessity is the mother of invention," says Gov. Andrew Cuomo, who plans to "break the box" on a long-planned tunnel rehabilitation project three months before its scheduled start.

[Users Report Issues with Federal Business Opportunities Website //](#) Frank Konkell

Customer service agents advised users to keep trying.

[Retiree Health Care Liabilities Keep Stacking Up For States //](#) Bill Lucia

Newly issued data show the financial challenge posed by "other post-employment benefits."

[The EPA Has Backed Off Enforcement Under Trump – Here Are The Numbers //](#) Marianne

Sullivan, Chris Sellers, Leif Fredrickson and Sarah Lamdan

Data gathered from EPA reports, staffers and retirees show the Trump administration has brought fewer environmental enforcement actions to conclusion and deferred more to states.

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[Compelling Benefits, Common Misconceptions: Putting Intelligent Automation To Work For Federal](#)

What, exactly, is intelligent automation (IA) - and what specific ways can agencies apply it? Who's "getting it right" when it comes to IA? And, what are some of the most common misconceptions that may limit the effectiveness and success of IA initiatives?

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January 4, 2019

GSA

Kelly Olson Leaving GSA

Four months after taking the helm as acting director of GSA Technology Transformation Services, Kelly Olson announced plans to leave the agency.

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HOUSE

House Rules Package to Modernize Congress

The House of Representatives' rules package includes a new "Select Committee on the Modernization of Congress," which will investigate and develop recommendations on modernizing Congress."

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VETERANS AFFAIRS

Gfrerer Confirmed as Permanent VA CIO

The Senate confirmed James Gfrerer as assistant secretary for the Office of Information and Technology at the Department of Veterans Affairs, filling the permanent CIO role.

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EVENT

Veritas Public Sector Vision Day

Join Eileen Vidrine, Chief Data Officer of the Air Force; and Ted Kaouk, Chief Data Officer of USDA, for Veritas Public Sector Vision Day on January 31, and take part in an interactive discussion about how the role of the CDO is changing with the modern IT landscape. We will cover the evolving interaction with agency leadership, how agencies are recalibrating their approach to data asset organization, and much more – you don't want to miss it. Attendees are eligible to receive 2.5 CPE credits. Register today to reserve your seat.

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FCC

FCC Fills Out Leadership

The FCC filled out its full roster of commissioners for the first time since April 2018, but shuttered most of their operations on Thursday amid the partial government shutdown.

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Subject: Lawmakers Look to Ensure Furloughed Feds Receive Back Pay When Agencies Reopen
Date: Friday, January 4, 2019 4:23:00 PM

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GovExec Breaking News

January 4, 2019



[Lawmakers Look to Ensure Furloughed Feds Receive Back Pay When Agencies Reopen //](#)

Erich Wagner

Maryland's Senate delegation on Thursday reintroduced a bill to ensure that federal workers furloughed during the partial government shutdown, and potentially future shutdowns, will be promptly given back pay once federal agencies reopen.

[Read full article »](#)

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Friday, January 4, 2019

Complaint says Kaiser Permanente didn't bargain in good faith.

Everett Daily Herald 04 Jan 2019 05:29

EVERETT — The National Labor Relations Board issued a complaint alleging that Kaiser Permanente, a non-profit healthcare provider, "failed and refused to bargain in good faith" with a coalition of unions that represent 85,000 health care workers in seven...

How the Shutdown Affects Federal Employment in Each State

Governing 04 Jan 2019 04:06

As the partial federal government shutdown enters its third week, its effects on public-sector employment are far-reaching across the country. Roughly 420,000 federal personnel are working without pay, and the Senate Appropriations Committee estimated...

Labor union files complaint against Kaiser Permanente's labor practices

Pacific Business News (Honolulu, HI) 04 Jan 2019 01:05

The National Labor Relations Board will hold a hearing regarding Kaiser Permanente's labor practices, following a complaint from a labor union. The Coalition of Kaiser Permanente Unions, which consists of 11 labor unions in the District of Columbia and...

Federal investigation closed after Mattress Factory settles sexual harassment claims

Pittsburgh Tribune-Review (Pittsburgh, PA) 03 Jan 2019 20:13

Jan. 03 --A National Labor Relations Board investigation into allegations that the Mattress Factory violated federal labor laws has been closed, the museum's acting director, Judith O'Toole, announced Thursday. The news comes more than a week after the...

Argyle Theatre Orchestra Musicians Unionize with Local 802 AFM, Seek Official Certification of Union

Broadway World 03 Jan 2019 19:44

The professional musicians who perform in musical productions at Babylon Village's Argyle Theatre have started the unionization process with the Associated Musicians of Greater New York, Local 802 AFM. A majority of the orchestra musicians have expressed...

House OKs Committee Name Change to Education and Labor

BloombergLaw - Daily Labor Report 03 Jan 2019 19:37

Congress • Reversion to previous name for panel • Move part of Democratic push to bolster union protections By Tyrone Richardson Democrats Jan. 3 kicked off control of the House in the 116th Congress by passing a name change for the panel once known as...

Hearing on Kaiser, union coalition labor dispute slated for March

Becker's Hospital Review 03 Jan 2019 18:46

The National Labor Relations Board has issued a complaint and scheduled an evidentiary hearing to address allegations filed by a coalition of 11 labor unions against Oakland, Calif.-based Kaiser Permanente, according to a San Gabriel Valley Tribune...

National Labor Relations Board closes Mattress Factory probe

Pittsburgh Post-Gazette (Pittsburgh, PA) 03 Jan 2019 18:23

The Mattress Factory museum announced Thursday that the National Labor Relations Board has closed an investigation regarding complaints made against the museum by one current and three former staff members. In September, four women alleged sexual...

Kaiser Opts to Fight Complaint Involving 85,000 Workers

BloombergLaw - Daily Labor Report 03 Jan 2019 16:16

Labor Law • Board previously offered conditional settlement • Dispute could be litigated over a number of years By Hassan A. Kanu Kaiser Permanente has decided to fight a federal labor board case alleging it has been unlawfully refusing to bargain with...

If the President Can't Tell an ALJ "You're Fired," Must the ALJ be Retired?

Crowell & Moring LLP News 03 Jan 2019 11:17

Jan.03.2019 He's back. Raymond Lucia was the petitioner in Lucia v. Securities and Exchange Commission, in which the U.S. Supreme Court held that the Securities and Exchange Commission's method of hiring its administrative law judges (ALJs) violated the...

Unionized Employers: NLRB Removes Key Hurdles for Deferring ULP Charges to Arbitration (US)

National Law Review 03 Jan 2019 11:04

The National Labor Relations Board recently issued more good news for unionized employers. In a guidance memorandum last week, the Board's General Counsel announced an updated approach that will help employers avoid litigating unfair labor practice...



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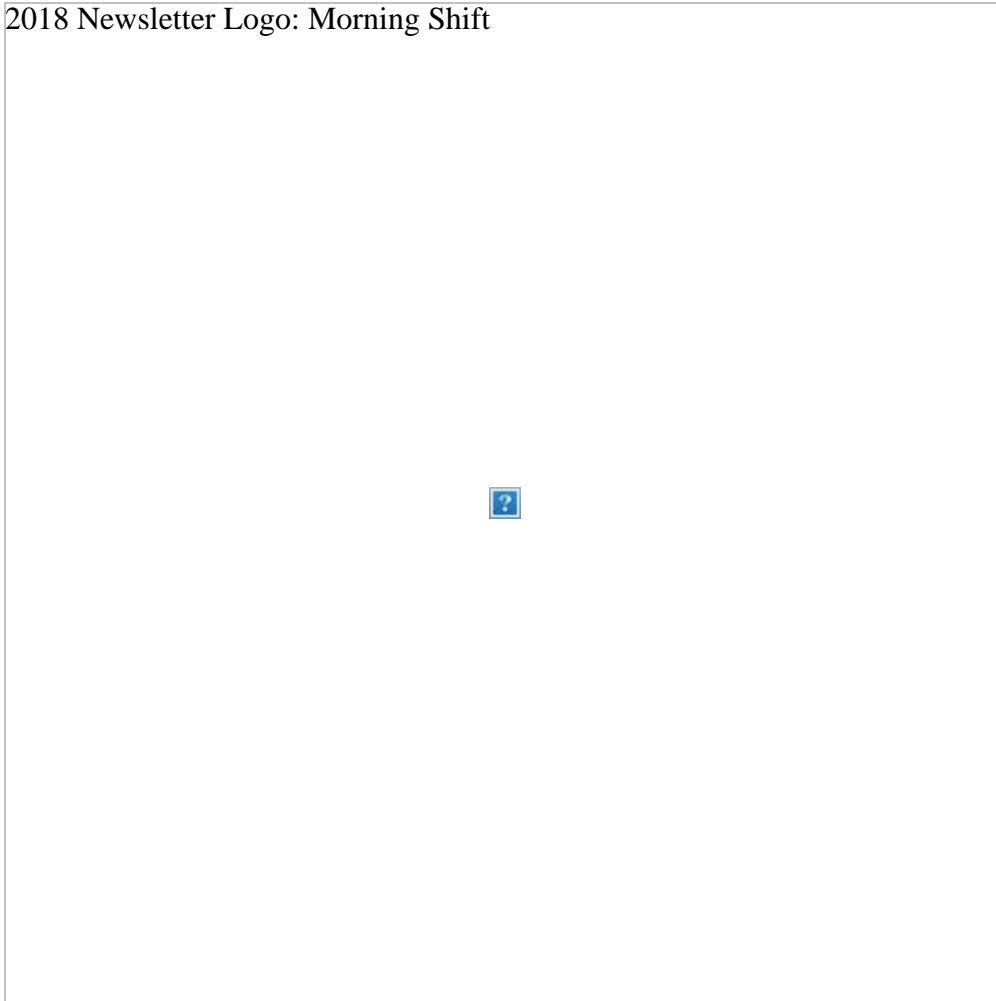


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Subject: POLITICO's Morning Shift: Fruitless fighting — Happy Jobs Day! — H-2B blues
Date: Friday, January 4, 2019 10:03:53 AM

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01/04/2019 10:00 AM EDT

By REBECCA RAINEY (rrainey@politico.com; [@RebeccaARainey](#))

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QUICK FIX

Congressional leaders head back to the White House today to try to break the impasse over President Donald Trump's border wall/fence/barrier and reopen the government. If not, more than 450,000 federal workers will continue to work without pay for a third week.

— **It's Jobs Day**, and economists expect a boost in job creation from the holiday shopping season.

— **DOL's H-2B application system is still down**, but some business groups say the computer glitch is a sign of a bigger problem.

— **2018 saw more strikes across the country**, but will the uptick become a trend?

GOOD MORNING! It's Friday Jan. 4, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to rrainey@politico.com, thesson@politico.com, ikullgren@politico.com and tnoah@politico.com. Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren) and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

DRIVING THE DAY

FRUITLESS FIGHTING: Immediately after taking control of the House chamber, Democrats passed a funding package [late Thursday](#) that would reopen the nine shuttered agencies, but without the border wall funding requested by the president. That legislation isn't going anywhere, POLITICO's Burgess Everett and Sarah Ferris report. Senate Republicans won't consider it without Trump's support, and the president boasted Thursday, "I've never had so much support as I've in the last week over my stance for border security."

Brandon Judd, president of the National Border Patrol Council, a union representing Border Patrol employees, said during a surprise appearance in the White House briefing room alongside the president that border patrol agents supported the shutdown as a means to get funding for the border wall, POLITICO's Matthew Choi reports. "They have been an absolute necessity for border patrol agents in securing the border," Judd said of physical barriers. "We need those physical barriers, and we appreciate President Trump and all of his efforts in getting us those physical barriers." More on that [here](#). Republican and Democratic

leaders will meet again with Trump today following a fruitless meeting Wednesday. More on the funding fight [here](#).

JOBS REPORT

HAPPY JOBS DAY!: Economists expected Thursday to see a jump this morning in the Bureau of Labor Statistics December jobs numbers, bolstered by the holiday season. Economists surveyed by [Econoday](#) forecast that the unemployment rate would stay low at 3.7 percent and that in December jobs would have risen by 180,000 — up from the 155,000 jobs created in November. Strong wage growth was also expected, with hourly earnings up 3 percent over the previous year (just shy of November's 3.1 percent gain). The private payroll company ADP was even [more optimistic](#), expecting 271,000 new private-sector jobs in December, compared to its November prediction of 179,000. Starting at 8:30 a.m. you can stop speculating and find BLS's December numbers [here](#).

Related: "5 Things to Watch in the December Jobs Report," from [The Wall Street Journal](#)

VISA UPDATE

H-2B BLUES: DOL's online portal for H-2B guest worker visas, still down after crashing due to "unprecedented demand" Tuesday, is "tentatively scheduled" to open at 2 p.m. on Jan. 7. Leaders at the Employment and Training Administration will host a 2 p.m. conference call today with further updates. Joe Wheeler, deputy assistant secretary in DOL's congressional affairs office, notified Congress Thursday of the disruption. Wheeler wrote in [a letter](#) obtained by Morning Shift that because the number of available visas is capped annually at 66,000, DOL's Foreign Labor Certification office is typically inundated with applications on Jan. 1. Only 33,000 visas are available for businesses looking to employ guest workers for the peak summer season, April-September.

On Tuesday, ETA received 97,800 visa applications . More than 22,900 attempts were made to log in to the application server, compared to 721 logins one year earlier, according to the letter. Andrew Bray, vice president of government relations at the National Association of Landscape Professionals, told Morning Shift that the glitch demonstrated how the cap "doesn't accurately reflect the demand for the program," as employers struggle to find temporary work in an historically tight labor market. Republican [lawmakers have pushed](#) to double the

annual allotment of H-2B visas. A [spending bill passed](#) in March of last year gave DHS Secretary Kirstjen Nielsen the authority to do so, but the agency made only 15,000 more available.

STRIKE RESURGENCE: Despite legal blows to the organized labor movement, 2018 saw a revival of unions' strongest tool: the strike. Former labor reporter Steven Greenhouse writes in The American Prospect that "the recent surge of strikes could portend a new wave of labor activism, as more and more workers see that collective action can pay off." With such a tight labor market, explains Greenhouse, striking American workers -- like the 7,700 Marriott workers organized by UNITE HERE who picketed for nine weeks -- find themselves with more clout at the negotiating table. More [here](#).

MEXICO CALLS FOR INVESTIGATION INTO TEAR GAS: Mexico's Foreign Ministry requested a "thorough" investigation Thursday into Border Patrol's recent use of tear gas on migrants trying to cross the U.S.-Mexico border, Alan Yuhas reports for the New York Times. Officials condemned "the occurrence of any sort of violent act on the border" and said they would hold a meeting with DHS and the Border Violence Prevention Council, according to the Times. Border Patrol agents fired the gas at about 150 migrants Tuesday; tear gas was also used by agents in November. More [here](#).

UNDOCUMENTED TRUMP CLUB WORKERS NOT VETTED DURING CAMPAIGN: Undocumented employees at the Trump National Golf Club in New Jersey were removed from Secret Service vetting lists during then-candidate Donald Trump's presidential campaign, Miriam Jordan reports for the New York Times. Emma Torres, an undocumented immigrant from Ecuador, told the Times that members of the kitchen staff were asked in 2016 to provide personal information, including their Social Security numbers, to the Secret Service for clearance purposes. Torres said that when she went to human resources to complain, she was told, "'It's O.K. No problem.' She scratched me off the list." The account helps explain how undocumented workers were able to fly under the radar at the Trump resort, and follows an earlier [Times report](#) that the club knowingly hired immigrants with false documentation. More [here](#).

NEW CONGRESS, NEW COMMITTEE: House Democrats changed the name of the committee tasked with overseeing labor issues back to the "Committee on Education and Labor" Thursday night, removing the word "workforce" from the name. The measure, included in a sweeping rules package, was opposed by

outgoing chair Rep. [Virginia Foxx](#) (R-N.C.), who said on the House floor that the move has "political ramifications," according to Bloomberg Law's Tyrone Richardson.

"Changing the committee's name from workforce to labor ... reflects how we view our fellow citizens," Foxx said, according to a [tweet](#) from Richardson. "It sends a message to the people we represent that we're interested only in serving some professions." The committee has not yet announced its hearing plans for the new Congress. Read the rules package [here](#).

TRADE PARADE

TRADE TENSIONS TANK EARNINGS: "President Donald Trump's top economic adviser is warning that many U.S. companies are likely to report lower earnings this season amid trade tensions between the United States and China," POLITICO's Megan Cassella reports.

"I think there are a heck of a lot of U.S. companies that have sales in China that are basically going to be watching their earnings be downgraded next year until we have a deal with China," Kevin Hassett, chairman of the Council of Economic Advisers, said in an interview on CNN today. He emphasized, however, that the administration "believes that slower sales caused by China's economic slowdown will put pressure on Beijing to make a deal in ongoing trade talks," Cassella writes. More for Pros [here](#).

COFFEE BREAK

— "Searching for images of CEOs or managers? The results almost always show men." from [The Washington Post](#)

— "When Your Boss Locks You Out for Nearly 6 Months and Cuts Off Your Healthcare," from [In These Times](#)

— "As Trump Holds Firm on Shutdown, He Never Mentions One Group: Federal Workers," from [The New York Times](#)

— "Sanders apologizes to women who said they were harassed during his 2016 campaign," from [POLITICO](#)

— "Were migrant children who died very sick before taken into U.S. custody, as

Trump claimed?" from [POLITIFACT](#)

— "Conway: Democrats 'turning a blind eye' to 'humanitarian crisis' at the border,"
from [POLITICO](#)

CORRECTION: *An earlier version of Morning Shift misstated the agency of which Michael Bars is spokesman. He is spokesman for the U.S. Citizenship and Immigration Service.*

THAT'S ALL FOR MORNING SHIFT!

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Date: Monday, January 14, 2019 10:02:30 AM

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01/14/2019 10:00 AM EDT

By IAN KULLGREN (ikullgren@politico.com; [@iankullgren](#))

With help From Alex Guillen and Kimberly Hefling.

Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click

[here](#).

QUICK FIX

Los Angeles public school teachers are set to go on strike today for the first time in 30 years, demanding pay raises and more resources.

— **An estimated 31,000 teachers** will walk off the job, leaving district officials scrambling to fill the void.

— **A federal workers union** sued the Trump administration, arguing the government is violating wage laws during the government shutdown.

— **The House passed legislation** to ensure federal employees quickly receive retroactive pay once the government shutdown ends.

GOOD MORNING! It's Monday, Jan. 14, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to rrainey@politico.com, thesson@politico.com, ikullgren@politico.com and tnoah@politico.com. Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren), and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

DRIVING THE DAY

LA TEACHERS TO STRIKE TODAY: Teachers in the nation's second-largest school district are set to go on strike today, escalating a battle over salaries, class sizes and support staff for nearly 500,000 children. "We are more convinced than ever than the district won't move without a strike," Alex Caputo-Pearl, president of United Teachers Los Angeles, said Sunday night.

More than 30,000 teachers are expected to picket after the union rejected Los Angeles Unified School District's latest offer Friday. The district has hired 400 substitute teachers and reassigned 2,000 non-union district staff with teaching credentials to replace the teachers. Administrators are also planning to group students together in large spaces and use online teaching tools to keep them occupied, according to the Los Angeles Times.

As POLITICO'S Kimberly Hefling [reports](#), the strike may lead to a new wave of teacher unrest nationwide, nearly a year after teachers in West Virginia, Kentucky, Oklahoma and Arizona staged walkouts to push their governors and state

lawmakers to provide more education funding.

Related read: "What to know as LAUSD teachers prepare to strike Monday," from the [Los Angeles Times](#)

SHUTDOWN WATCH

FEDERAL FORCED LABOR?: A union of federal workers sued the Trump administration Friday, accusing agencies of violating federal wage and overtime requirements by refusing to pay "essential" employees forced to work during the government shutdown. The lawsuit argues that the government must at least pay federal workers minimum wage during a shutdown as well as eligible overtime.

"In a **complaint** filed in the U.S. Court of Federal Claims, the National Federation of Federal Employees argued that the government's failure to pay lower-wage workers violated the Fair Labor Standards Act, the 1938 law governing minimum wage and overtime pay," POLITICO's Ian Kullgren reports. "The complaint — filed the same day that thousands of federal employees were denied paychecks for the first time — said that the federal government is required by law to pay its employees at least the federal minimum wage of \$7.25 an hour and eligible overtime during a shutdown."

HOUSE PASSES BACK PAY BILL: The House on Friday passed legislation that would ensure federal employees quickly receive retroactive pay once the government shutdown ends.

"The **411-7 passage vote** sends the measure, [S. 24 \(116\)](#), on to President Donald Trump, who told Senate leaders he would sign it," POLITICO's Caitlin Emma reports. "Even upon enactment of the bill, which passed the Senate late Thursday, affected federal workers would still go without pay until the partial government shutdown ends. But those employees wouldn't have to wait until the next payday." More [here](#).

FEDERAL WORKERS FILE FOR UNEMPLOYMENT: In the absence of pay, furloughed federal employees across the country are filing for state unemployment benefits. In Maryland and D.C., 7,000 unemployment claims have been filed by federal government workers and contractors since the shutdown began, [according to NPR](#).

In Pennsylvania, 2,300 federal workers have filed for unemployment, creating "a

potential strain on the state's unemployment system during its busiest time of the year," according to the [Pittsburgh Post-Gazette](#). And in California, Gov. Gavin Newsom vowed last week that furloughed workers will be made "[quickly eligible](#)" for unemployment insurance.

TRUMP LOSING PUBLIC OPINION WAR: The majority of Americans blame President Donald Trump and Republicans for the government shutdown, according to a Washington Post-ABC News poll.

— **Overall**, 53 percent blame Trump and Republicans; 29 percent blame Democrats; and 13 percent blame both equally. A whopping **66 percent** oppose invoking a national emergency to build a wall on the southern border.

— Among **Democratic** voters, 85 percent blame Trump and Republicans; 6 percent blame Democrats; and 5 percent blame both equally.

— Among **Republican** voters, 15 percent blame Trump and Republicans; 68 percent blame Democrats; and 15 percent blame both equally.

— Among **independent** voters, 53 percent blame Trump and Republicans; 23 percent blame Democrats; and 17 percent blame both equally. More [here](#).

JOINT EMPLOYER

JOINT EMPLOYER COMMENT PERIOD EXTENDED: The NLRB on Friday extended the comment period for its proposed joint employer rule, which would limit the extent to which franchisors could be held liable for labor violations committed by franchisees and contractors. The new deadline for new comments is Jan. 28, and the deadline to respond to comments is Feb. 11. Read the announcement [here](#).

Meanwhile, four dozen members of the Congressional Progressive Caucus on Friday asked the NLRB to withdraw the proposal (though we're not holding our breath). Read the letter [here](#).

IMMIGRATION

A NEW CARAVAN: "Another migrant caravan is forming in Honduras, with plans to set out next week on a journey that will once again test the immigration policies of Mexico and the United States," the Washington Post's Sarah Kinoshian and Kevin

Sieff report from Mexico City.

"In much the way last year's Central American caravan originated, a flier is circulating on Honduran social media. 'We're looking for refuge,' it says. 'In Honduras, we are being killed.' It advertises a 5 a.m. departure on Jan. 15 from the northern city of San Pedro Sula." More [here](#).

BORDER PATROL UNION SCRUBS ANTI-WALL REMARKS: "A union that represents Border Patrol agents recently deleted a webpage that said building walls and fences along the border to stop illegal immigration would be 'wasting taxpayer money,'" POLITICO's Ted Hesson reports.

"The deleted webpage, posted in 2012, argued that border barriers don't tackle the root causes of migration — and could potentially encourage more migrants to enter the U.S. fraudulently or overstay visas," Hesson writes. "The webpage was taken down after the union's president endorsed the wall at a White House news briefing earlier this month.

"Walls and fences are temporary solutions that focus on the symptom (illegal immigration) rather than the problem (employers who knowingly hire illegal aliens),' the union wrote in a media FAQ." More [here](#).

AT THE BORDER

WELL, THE OTHER BORDER: While Trump focuses on building a wall along the southern border, Democrats plan to use their agenda to investigate threats along the northern border, POLITICO's Lauren Gardner reports.

"There are nearly 200 vacancies for Border Patrol agents at the Canadian border, and the Department of Homeland Security has warned that homegrown terrorists can easily — and legally — cross the U.S.-Canada border without being notice," Gardner writes. "This terrorist threat has caught notice of Democrats now running the House Homeland Security Committee, which will investigate the porous nature of the Canadian border and whether the border agency has the right resources to catch would-be terrorists from slipping into the country unnoticed."

"Looking at the Canadian border is definitely a place I want to go," said Rep. [Lou Correa](#) (D-Calif.), who is expected to lead the House Homeland Security Oversight and Management Efficiency Subcommittee. More [here](#).

SCOTUS TAKES UP DRILLING LAWSUIT: The Supreme Court on Friday said it will decide whether workers on offshore drilling rigs are subject to state wage laws. The 9th Circuit Court of Appeals in San Francisco last year ruled that under the Outer Continental Shelf Lands Act, workers on drilling platforms are subject to the minimum wage and overtime laws of adjacent states — in this case, California.

However, the Fifth Circuit, which deals with many Gulf of Mexico-based legal issues, previously ruled that state laws should only apply on the outer continental shelf if there is a gap in federal law. The California drilling company argues that workers are protected under the FLSA, and that also being subject to California's labor laws presents a "potentially massive liability for OCS operators that fully complied with the FLSA." The case, expected to be heard and decided later this year, is [Parker Drilling Management Services v. Newton, 18-389](#).

COFFEE BREAK

— "More Minnesotans are working past age 65 than ever," from the [Minneapolis Star-Tribune](#)

— "'At what point does this become unsustainable?': Federal workers react to shutdown," from [CBS News](#)

— "'I just want to do my job': federal workers reveal pressure of living without pay," from the [Guardian](#)

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Date: Friday, January 4, 2019 6:03:52 AM

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The National Law Journal Daily Headlines

Jan 04, 2019

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A MESSAGE FROM THE EDITOR

In our top story, President Donald Trump said Wednesday that he expects the U.S. Supreme Court to act in his favor on upcoming litigation to end the Deferred Action for Childhood Arrivals program, a move he anticipates will help him negotiate with Democrats over funding a border wall. Tony Mauro reports. And a settlement agreement announced Thursday requires a for-profit education company to change its enrollment practices and forgo collection of \$493.7 million owed by more than 179,000 students. Robert Storace reports.



Check out these and other stories below.

– Lisa Helem, Editor-in-Chief, The National Law Journal

[CIVIL APPEALS](#) | [NEWS](#)

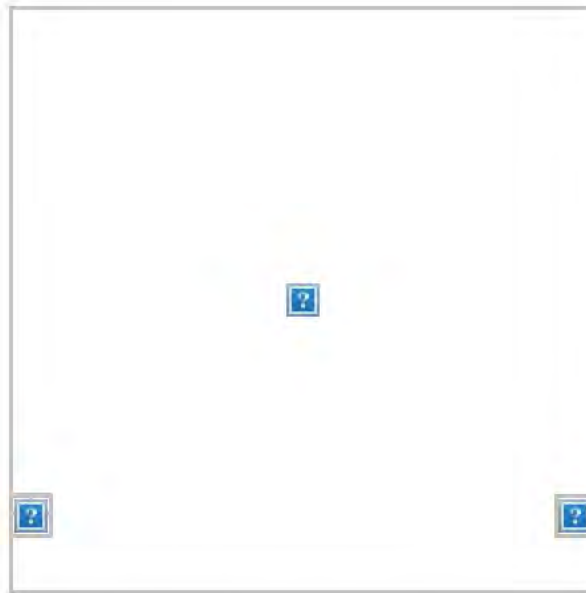
Trump Portrays Supreme Court as Key Player in DACA, Border Wall Fights

By Tony Mauro

“President Trump's comments display a disgraceful degree of disrespect for the Supreme Court and role of an independent...

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NEWS

States' Settlement With Career Education Corp. Wipes Out \$494M in Student Debt

By Robert Storace

Forty-eight states and the District of Columbia announced a settlement agreement Thursday with Career Education Corp.... [Read More](#)



JUDICIAL ETHICS | NEWS

Justice Alito 'Unrecuses' for 9th Time, Rejoining Oracle Copyright Case

By Tony Mauro

Because of a family inheritance several years ago, Alito and his wife have had holdings in numerous corporations, unlike... [Read More](#)

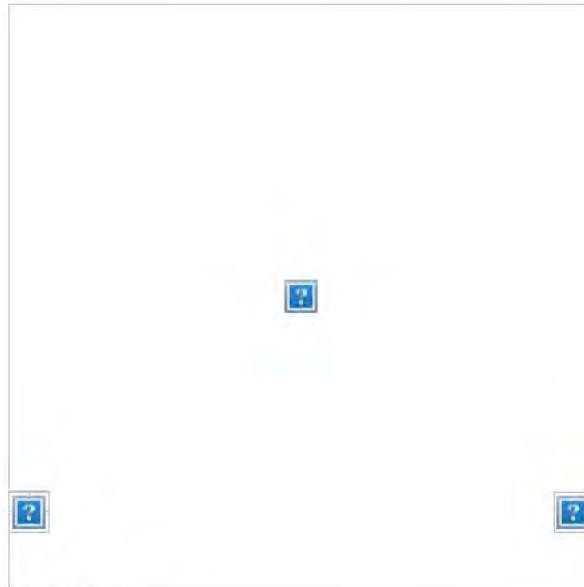


NEWS

Democratic State AGs Take First Step in Appealing 'Ludicrous' Ruling Killing ACA

By Ellis Kim

The group of states, led by California Attorney General Xavier Becerra, are expected to argue that the law's individual... [Read More](#)



INTERNATIONAL - EUROPE | NEWS

Despite Lifting of Some Russia Sanctions, GCs Cautioned to Remain Wary

By Sue Reisinger

The U.S. Treasury Department's Office of Foreign Assets Control said Dec. 19 in the first of its kind notice to Congress... [Read More](#)



GOVERNMENT | NEWS

Licensing and Mergers Halt With FCC Shutdown

By Dan Clark

License approval is at a standstill and the 180-day clock on mergers also has been paused, said Laura Phillips, a telecommunications...

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Galveston Attorney Charged With Representing Clients He'd Never Met | Texas Lawyer

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A Galveston attorney has been indicted on charges of insurance fraud barratry and money laundering in connection with... [Read More](#)

What 11 Ex-Big Law Partners' Financial Disclosures Revealed in 2018 | Law.com

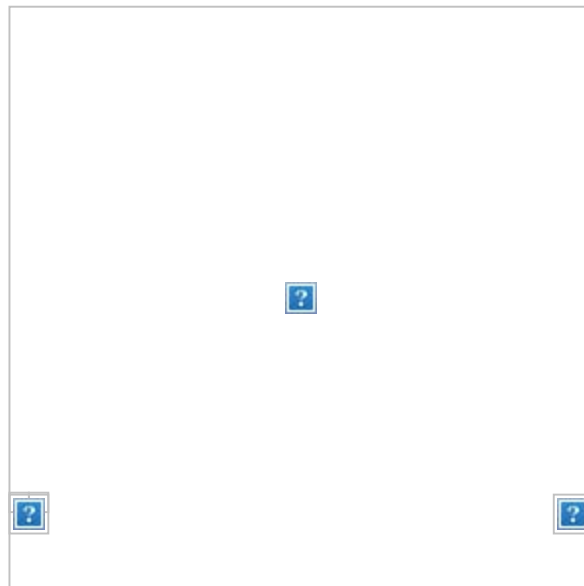
Texas Lawyer

A collection of our 2018 public-records reporting on the financial disclosures from Big Law partners who left among... [Read More](#)

What 11 Ex-Big Law Partners' Financial Disclosures Revealed in 2018 | New York Law Journal

New York Law Journal

Geoffrey Berman the U.S. attorney for SDNY reported earning about \$3.5 million in salary and bonus last year at Greenberg... [Read More](#)



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Date: Friday, January 4, 2019 3:42:25 PM

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GovExec Breaking News

January 4, 2019



[Trump Threatens Year-Long Shutdown, Says Feds Want Him to Keep Fighting for a Wall //](#)

Eric Katz

President Trump threatened to keep parts of the government shuttered for more than a year after meeting with congressional leadership on Friday, a negotiation that Republicans called productive but Democrats bemoaned as making little progress.

[Read full article »](#)

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Weekly Newsletter
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TOP STORIES OF THE WEEK

FROM THE ABA JOURNAL



[Rather than increase 1L class size in 2018, some law schools shrunk strategically](#)

Jan 3, 2019, 10:00 am CST

[Lawyer who 'won't take no for an answer' is suspended for two years](#)

Jan 3, 2019, 11:15 am CST

[Chief Justice Roberts: 'Incivility or disrespect' in the federal judiciary is more frequent than 'overt sexual harassment'](#)

Jan 2, 2019, 10:20 am CST

[Chemerinsky: What will the conservative high court mean for 2019?](#)

Jan 3, 2019, 6:00 am CST

COVER STORY

[Prisons are housing mental health patients who've committed no crimes](#)

Some states use local jail cells to hold mental health patients. New Hampshire stands alone in its legal treatment of mental health patients within state prison walls.

[From the January-February 2019 magazine](#)

[Shutdown halts many immigration hearings; federal courts could be affected after next week](#)

Jan 3, 2019, 9:20 am CST

[Lifestyle tips for disorganized lawyers: Unclutter your practice and your life in the new year](#)

Jan 2, 2019, 5:15 pm CST

[What do experts predict will be the immigration law battles in 2019?](#)

Jan 3, 2019, 3:40 pm CST

[These lawyers switched careers, chasing the next blockbuster as literary agents](#)

[From the January-February 2019 magazine](#)

[Attorney suicide: What every lawyer needs to know](#)

[From the January-February 2019 magazine](#)

[4 strategies to build lasting resilience among legal professionals](#)

Jan 3, 2019, 6:15 am CST

[The married couple, the witch and the courtroom: A tale of jury selection](#)

Jan 2, 2019, 6:30 am CST

[A roadmap for law firm innovation in 2019](#)

Jan 3, 2019, 6:30 am CST

[Reproductive justice is a growing practice area](#)

[From the January-February 2019 magazine](#)

[ABA president urges Virginia lawmakers to ratify Equal Rights Amendment](#)

Jan 3, 2019, 2:28 pm CST

[Judge's unusual instruction could upend](#)

ABA JOURNAL PODCASTS POWERED BY LEGAL TALK NETWORK

[Creating order](#)

Organizer Janet Taylor shares tips and tricks for finally conquering mounds of paperwork and constantly lost house keys.

Cluttered desk.

THIS WEEK'S FEATURED BLAWG FROM OUR BLAWG DIRECTORY

[Tilting the Scales](#)

Business law posts present fictional scenarios, then explain the legal implications. Contains many, many puns.

[at least a dozen murder convictions](#)

Jan 3, 2019, 12:00 pm CST

[Toymaker asks court to find its 'Poey Puitton' purses don't infringe on Louis Vuitton's IP](#)

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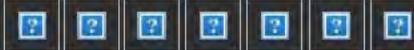
QUESTION OF THE WEEK

[What's your 2019 New Year's resolution?](#)

Are you responding to changing needs of clients, enhancing your legal practice or setting strictly personal goals? Answer in the comments.

Read the answer to last week's question: [Do you give holiday gifts to clients and co-workers?](#)

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Subject: As DIY Litigants Crowd The Docket, Courts Step In To Help
Date: Monday, January 7, 2019 10:25:34 AM



Access to Justice

featured



[As DIY Litigants Crowd The Docket, Courts Step In To Help](#)

Tens of thousands of people across the country are representing themselves in federal lawsuits, often because they can't afford an attorney. While those litigants can face insurmountable hurdles, a growing number of programs are trying to ensure they have their day in court.

[Read full article](#)

[Famed Journal Lends Its Clout To Fighting Access Crisis](#)

The Academy of Arts and Sciences today published the winter edition of its renowned journal *Daedalus*, focused entirely on access to the civil justice system. Law360 spoke with its editors and contributors about why legal access is a problem that requires more than just lawyers to solve.

[Read full article](#)

[4 Access To Justice Cases To Watch In 2019](#)

The dust hasn't settled from a year that included major decisions on issues like

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pretrial bail practices and veterans' right to bring class actions over denied benefits, but 2019 already promises big moments for access to justice cases on civil forfeiture and legal aid funding.

[Read full article](#)

Old Foe Of Criminal Sentencing Reform May Soon Oversee It

Attorney General nominee William Barr spent decades opposing some of the criminal justice changes that President Donald Trump signed into law last month — putting him at odds with senators responsible for his confirmation and raising concerns about how he will implement the reforms.

[Read full article](#)

Shutdown Hits Federal Courts, Grows Immigration Backlog

Immigrants uncertain if they should show up for court dates and mounting case backlogs. Judges pausing civil disputes. Planned improvements to court facilities put on hold. As the shutdown of the government enters its third week, federal workers aren't the only ones whose futures have been thrown into uncertainty.

[Read full article](#)

Ex-DOJ Heavy Hitters Urge Justices To Nix Murder Conviction

Six former top Justice Department leaders are urging the U.S. Supreme Court to vacate a murder conviction that they say poses an existential threat to the entire justice system, after a Mississippi prosecutor repeatedly blocked black citizens from serving on the defendant's six juries.

[Read full article](#)

Vets Expand Scope Of Landmark Benefits Class Action

When Navy veteran Peter Boerschinger, 79, required emergency treatment for pneumonia and congestive heart failure, he assumed that the U.S. Department of Veterans Affairs would pick up the cost of the emergency room visit that his private insurance didn't pay for.

[Read full article](#)

All Access

Sarah Geraghty Talks Bail Reform And Decriminalizing Poverty

Sarah Geraghty's used to making an impact with the Southern Center for Human Rights, but rarely is it put so bluntly as when the Atlanta mayor called out her group's influence in orchestrating the city's recent bail reform measures.

[Read full article](#)

Perspectives

Stripping The False Premises From Civil Justice Problems

When I began researching access to justice in 2004, there were two settled beliefs about civil justice problems so obvious that few bothered to investigate them. Both turned out to be false, says Rebecca Sandefur, associate professor of sociology and law at the University of Illinois at Urbana-Champaign.

[Read full article](#)

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Perspectives

Cy Pres Awards Are The Best Answer

The argument that cy pres awards violate the rights of absent class members is wrong on many levels and ignores the fact that prohibiting such distributions creates far more problems than it solves, says John Campbell, a professor at the University of Denver Sturm College of Law.

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GovExec Breaking News

January 7, 2019



[As Shutdown Talks Stall, Democrats Try a New Tactic to Open Some Agencies](#) // Eric Katz

Lawmakers and the White House have shown little progress despite extended weekend negotiations as the partial shutdown dragged into its third week on Monday, and eclipsed the length of the 16-day shutdown in 2013.

[Read full article »](#)

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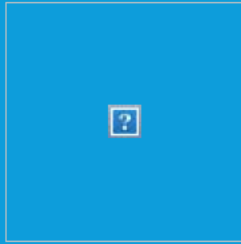
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Subject: First Move: Labor Vacancies Bring Challenges • National Grid Workers Vote
Date: Monday, January 7, 2019 7:08:56 AM



What you need to know to start your day.

Labor Vacancies Bring Challenges • National Grid Workers Vote



By [Patricio Chile](#)

HELP WANTED AT THE LABOR DEPARTMENT

The Labor Department is starting the new year without Senate-confirmed leaders at seven of its subagencies. Jaclyn Diaz [reports](#) that those openings could slow some significant regulatory initiatives.

The vacancies, including in the Wage and Hour Division, come as the department is still working on tackling overtime policy and “joint employer” liability. The DOL is likely to face some challenges to those and other moves in the courts and Congress.

NATIONAL GRID CONTRACT SET FOR VOTE

More than 1,200 locked-out National Grid workers are set to vote on a contract today that could put an end to a 6-month-long work stoppage in Massachusetts. The company and two employee unions came to a tentative agreement last week but details of the contract haven’t been released.



A protester holds a sign as locked-out workers picket outside the National Grid gas facility yard in Malden, Mass., on Sept. 5, 2018.

Photo by Pat Greenhouse/The Boston Globe via Getty Images

Union officials said the new agreement would create dozens of new jobs focused on public safety. That comes after recent scrutiny over how the lockout jeopardized the well-being of natural gas customers. Union officials reported dozens of potentially hazardous gas leaks and safety concerns to the company during the negotiation impasse. And Massachusetts' utility regulator received more than 50 complaints of gas leaks, delayed installations, and slow repairs tied to the lockout. Andrew Wallender is following the vote results.

OTHER STORIES WE'RE WATCHING

- Punch In with Chris Opfer and Jaclyn Diaz for more on **DOL vacancies** and a look at cases involving the **“80/20” rule** and Labor Secretary Alexander

Acosta's controversial past as a federal prosecutor. Read it [here](#).

- The **U.S. Supreme Court** will issue orders at 9:30 a.m. They could involve appeals involving **LGBT** workplace discrimination, the use of **salary history** when setting pay, and jury instructions on workplace **disability accommodations**.
- A **California** law that requires employers to pay **piece-rate workers** an hourly wage during some work periods survives constitutional muster, a state appeals court ruled Friday. Jon Steingart will have the story later today.
- The average union-negotiated **wage hike** remained at 3.4 percent for the second biweekly period in a row, ending 2018 at a high point for labor, as tracked and calculated by Bloomberg Law analysts. Check back later and every two weeks for the latest figures, facts, and trends in wages.

AROUND THE WEB

- Chicago Mayor Rahm Emanuel ordered an audit of the city's \$100 million-per-year **workers' compensation** program that was previously handled by Edward Burke, the longtime alderman who was charged with attempted extortion last week, [the Chicago Tribune reports](#).
- As the **government shutdown** continues, some federal employees are turning to crowdsourcing website GoFundMe, asking strangers for assistance during the crisis, [the Daily Beast reports](#).
- Nearly 10 months after Toys R Us started closing 735 U.S. stores, about 2,000 workers laid off without severance are finally getting paid, [CBS News reports](#).
- Amazon's record-breaking **holiday season** in 2018 was accomplished with far fewer part-time workers than in years past, signaling that the company's growing embrace of **automation** is starting to pay off, [Gizmodo reports](#).

For all of today's Bloomberg Law headlines, visit [Daily Labor Report](#)



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Monday, January 7, 2019

Punching In: Help Wanted at the Labor Department

BloombergLaw - Daily Labor Report 07 Jan 2019 06:07

By Chris Opfer and Jaclyn Diaz Monday morning musings for workplace watchers DOL Skeleton Crew |APB for Administrative Judges | Acosta-Epstein Latest Jaclyn Diaz: It appears someone at the Labor Department had a New Year's resolution to make changes. A...

Uncertainty Remains As DC Circuit Weighs In On NLRA Joint Employer Standard (US)

National Law Review 06 Jan 2019 22:53

Much attention over the past few years has been given to the ongoing saga concerning the standard applied by National Labor Relations Board ("NLRB" or "Board") to determine when two unrelated business entities share sufficient control over a group of...

Federal Government Shutdown: Some Of The Ways Oregon Is Affected

Patch.com 06 Jan 2019 08:45

PORTLAND, OR – Much of the federal government is now into its third week of being shut down. There's not a lot of optimism that it's going to end any time soon. In addition to the hundreds of thousands around the country who have either been furloughed...

Decertification Petition Was Improperly Dismissed, NLRB Rules

National Law Review 05 Jan 2019 11:10

Recently, we explored how the NLRB's rules for determining the timeliness of a representation can be confusing. Another area of complexity comes from whether a decertification petition will be processed in the face of unfair labor practice charges filed...

What Are The Top 3 Issues To Watch At The NLRB In 2019?

National Law Review 04 Jan 2019 16:41

Article By 2018 was a busy year at the National Labor Relations Board (NLRB), and we saw many significant developments, such as class action waivers being green lighted in the wake of a U.S. Supreme Court decision. It appears more significant change is...

Murray Statement on Republicans' Failure to Confirm Nominees to Important Agencies Responsible for Protecting

Senate Health, Education, Labor and Pensions Committee 04 Jan 2019 13:47

The NLRB lacks Mark Pearce's expertise and knowledge—while Republican Board members rush to make decisions that chip away at workers' rights Washington, D.C. – U.S. Senator Patty Murray (D-WA), ranking member of the Senate Health, Education, Labor, and...

Scott Elected Chairman of House Education and Labor Committee

BloombergLaw - Construction Labor News 04 Jan 2019 13:27

Congress • Virginia Democrat was ranking member in previous Congress • Panel expected to host oversight hearings, push for minimum wage hike By Tyrone Richardson Rep. Bobby Scott was selected by the House Democratic Caucus Jan. 4 to chair the Education...

Throwing the Challenge Flag on the NFL's Collective Bargaining Agreement

Kentucky Law Journal 04 Jan 2019 12:30

Download a copy of this Note: Throwing the Challenge Flag on the NFL's Collective Bargaining Agreement Download Student Note | 107 KY. L. J. ONLINE | Volume 107 Joseph T. McClure[1] I. Introduction The National Football League ("the NFL" or "the League"),...

Case: Labor Relations/Election (N.L.R.B.)

BloombergLaw - Labor Relations News 04 Jan 2019 10:27

NLRB certifies that a union is not the exclusive representative of unit of the employer's sprinkler fitters and helpers. The union argued that the employer unlawfully fired two employees who could have determined the outcome of the tied representation...

Sens. Romney and Braun Join Republicans on HELP Committee (1)

BloombergLaw - Daily Labor Report 04 Jan 2019 09:46

Congress • New members replace Sens. Hatch and Young • Republicans to tee up confirmation of labor agency picks By Tyrone Richardson Sens. Mitt Romney and Mike Braun are joining other Republicans on the Senate labor and pensions committee. Romney (Utah)...



Legal News FYI monitors news, cases, and legislative developments of interest to the NLRB. To be added to or removed from the distribution list contact Andrew Martin. Please note that these are external links and the Agency takes no responsibility for their content.

From: [Morning Shift](#)
To: [Ring, John](#)
Subject: POLITICO's Morning Shift: Trump eyes national emergency to build border wall — DOL relaunches visa website — LA teachers prep for strike
Date: Monday, January 7, 2019 10:05:21 AM

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2018 Newsletter Logo: Morning Shift



01/07/2019 10:00 AM EDT

By TED HESSON (thesson@politico.com; [@tedhesson](#))

Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click [here](#).

President Donald Trump repeated over the weekend his threat to declare a national emergency so he can build a border wall. Meanwhile, the partial government shutdown heads into its third week — with more the 450,000 federal workers on the job without pay.

—**DOL will relaunch** a visa application website today after it crashed last week.

—**Roughly 33,000 teachers** in Los Angeles will strike Thursday if the union can't reach a deal with the school district.

—**A trial in San Francisco** over the inclusion of a citizenship question on the 2020 Census starts today.

GOOD MORNING! It's Monday Jan. 7, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to rrainey@politico.com, thesson@politico.com, ikullgren@politico.com and tnoah@politico.com. Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren) and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

SHUTDOWN DOWNLOAD

TRUMP EYES EMERGENCY POWERS: President Trump on Sunday reiterated his threat to declare a national emergency to build a wall on the U.S.-Mexico border, POLITICO's Marianne LeVine and Quint Forgey [report](#). Several Democrats and liberal advocates pointed out that such a move would likely draw legal challenges.

House Democrats [released](#) four bills Sunday to reopen closed agencies. The measures don't fund a border wall, which means they likely won't go anywhere in the Senate. The White House, meanwhile, formally asked Congress for \$5.7 billion for "steel barrier" — confirming that Trump has given up on building a concrete wall.

What about DACA? Trump repeated Sunday that he's disinclined to address DACA until after the Supreme Court rules on its legality. "I think we'd complicate it," Trump said, according to a White House transcript. "I'd rather have the Supreme Court rule and then work with the Democrats on DACA."

Related reads:

"How the Border Wall Is Boxing Trump In," from Julie Hirschfeld Davis and Peter

Baker in the New York Times. Find it [here](#).

"What the President Could Do If He Declares A State of Emergency," by Elizabeth Goitein in the Atlantic. Read it [here](#).

VISA UPDATE

VISA WEBSITE GETS A REBOOT: The Labor Department will today put back online a visa application website for employers seeking temporary foreign workers, POLITICO's Ted Hesson [reports](#). The website crashed Jan. 1 after employers submitted requests for approximately 98,000 workers through the H-2B visa program.

The website returns at 2 p.m., but DOL officials last week asked employers seeking visas for any program other than H-2B not to use the portal until at least one hour after the restart. A DOL spokeswoman later told POLITICO the request was "to ensure the best experience" for users. Find more info from DOL [here](#).

UNIONS

L.A. TEACHERS READY TO STRIKE: Roughly 33,000 teachers in Los Angeles will go on strike Thursday if their union doesn't reach a deal with the school district, Nour Malas and Tawnell Hobbs [report](#) in the Wall Street Journal. The teachers want better pay and to limit the growth of charter schools, according to the Journal.

A strike appears more likely after a federal judge on Friday [rejected](#) the school district's attempt to block the work stoppage. The district argued the labor action would keep special needs students from receiving legally mandated educational services, but the judge said the issues were unrelated.

Key context: "There were more strikes by educators in 2018 than at any time in the past 25 years," the Journal reports. "Teachers in North Carolina, Arizona and West Virginia won average pay increases between 5 percent to 20 percent after walkouts that closed schools."

CITIZENSHIP QUESTION GOES TO COURT: A federal trial begins in San Francisco today over the Trump administration's decision to inquire about citizenship status on the 2020 Census. U.S. District Judge Richard Seeborg, an Obama appointee, will consider a pair of cases brought by the state of California

and the city of San Jose, among others. The plaintiffs [argue](#) that the question violates the Constitution and federal regulatory law.

The Supreme Court [will hear](#) oral arguments on Feb. 19 related to a separate lawsuit led by the state of New York. Specifically, the justices will consider whether Commerce Secretary Wilbur Ross and other officials can be deposed to explain the origin of the question.

MARYLAND WEIGHS MINIMUM WAGE HIKE: Democrats in the Maryland General Assembly will push a \$15 minimum wage in a 90-day state legislative sessions that begins Wednesday, Ovetta Wiggins and Arelis Hernández [write](#) in the Washington Post. The push to raise the minimum wage — currently \$10.10 — could face resistance for Republican Gov. Larry Hogan, the Post reports.

DIGGING INTO MIGRANT DEATHS: A Democratic congressional [delegation](#) to examine a migrant child's death in custody will share its findings today. House Judiciary Chairman [Jerry Nadler](#) (D-N.Y.) will join several other House members and Sen. [Jeff Merkley](#) (D-Ore.) at a 2:30 p.m. EST press briefing after a tour of the New Mexico CBP facility where an 8-year-old Guatemalan boy [died](#) on Christmas Eve. Watch a livestream [here](#).

NIELSEN SOUGHT FOR HOMELAND HEARING: Rep. [Bennie Thompson](#) (D-Miss.), chairman of the House Homeland Security Committee, called Friday on DHS Secretary Kirstjen Nielsen to testify at the committee's first hearing under Democratic leadership. In a letter to Nielsen, Thompson said Trump's "boondoggle border wall" aims to distract the public from a flawed border security policy that led to child deaths in custody. Read the letter [here](#).

Along those lines, Sen. [Catherine Cortez Masto](#) (D-Nev.) demanded in a letter today that DHS and CBP official perform a full evaluation of standards and protocol to ensure the safety of detained children. Read it [here](#).

Related read: "House Democrats prepare fusillade of Trump investigations," by POLITICO's Adam Cancryn. Find it on POLITICO Pro [here](#).

INSIDE TRUMP'S APPROACH TO FAMILY REUNIFICATION: Chris Meekins, the Trump appointee who helped oversee family reunifications before leaving HHS last week, described the process to put thousands of migrant families back together and defended the administration's work. Hear his side of the story on POLITICO's Pulse Check podcast with Dan Diamond [here](#).

TRADE CORNER

THE COST OF TRUMP'S TARIFFS: President Trump's steel and aluminum tariffs have forced some U.S. businesses to consider moving overseas, Peter Goodman [reports](#) in the New York Times. "Companies that import electronics and other parts are scrambling to remain profitable while exploring alternatives, such as moving plants beyond reach of the duties," he writes. One Michigan electronics business expects the tariffs will halve profits in 2019.

TRUMP ON SKILLED WORKERS: President Trump said Friday he wants tech companies to be able to retain talented foreign workers, Alex Leary [reports](#) in the Wall Street Journal. But Trump's comments (which included little detail) belie his own administration's crackdown on legal immigration. The number of temporary visas issued under Trump [has dropped](#) compared with Obama levels, and employers argue they face increased uncertainty when it comes to keeping or recruiting foreign workers.

UAW LAWSUIT OVER TEMPORARY WORKERS: UAW filed a lawsuit last week against General Motors over the use of temporary employees at a Fort Wayne assembly plant, Jamie LaReau [reports](#) in the Detroit Free Press.

"The contract requires GM to transfer union members with seniority to open jobs at other plants," LaReau writes. "But, the suit alleges, GM is circumventing the agreement by using temporary employees at its factory in Fort Wayne, Indiana, instead of seniority union members."

The automaker intends to close five plants in North America and cut 6,000 jobs — which means more legal battles could be on the way, LaReau reports. Read the complaint [here](#).

COFFEE BREAK:

— "While federal workers go without pay, senior Trump administration officials are poised to get \$10,000 raises," from [the Washington Post](#)

—"Government shutdown closes immigration courts, adding to huge backlogs," from [the Arizona Republic](#)

—"Inquiry Into Migrant Shelters Poses Dilemma: What Happens to the Children?" from [the New York Times](#)

—"22 immigrants died in ICE detention centers during the past 2 years," from [NBC News](#)

THAT'S ALL FOR MORNING SHIFT!

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Subject: Threat of a year-long shutdown; efforts to ensure back pay for furloughed feds
Date: Monday, January 7, 2019 5:31:59 AM

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GovExec Today

January 7, 2019



Editor's note: *The partial government shutdown affects more than furloughed feds. Tell us how it is affecting your work and your agency's mission by emailing webmaster@govexec.com.*

[Trump Threatens Year-Long Shutdown, Says Feds Don't Mind Missing Paychecks](#) // Eric Katz

"The people that won't get next week's pay, or the following weeks pay, if you ever really looked at those people they'd say, 'Mr. President please keep going,'" Trump said.

[Lawmakers Look to Ensure Furloughed Feds Receive Back Pay When Agencies Reopen](#) // Erich Wagner

Sponsors of the legislation, which has passed the House as part of an appropriations package, say it could deter future shutdown threats.

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[Register Now](#)

[House Democrats Look to Crack Down on Feds With Conflicts of Interest, Ethics Violations](#) // Eric Katz

Reforms are part of large package they say is essential to "restoring integrity in government."

[AFGE Seeks to Correct the Record after Member Union Endorses Shutdown](#) // Erich Wagner

"Every federal employee wants to get back to work," the union said, after National Border Patrol Council officials appeared with President Trump Thursday.

[Congress Used To Pass Bipartisan Legislation – Will It Ever Again?](#) // Jeffrey D.

Grynaviski

Most Congresses since the 1970s have passed more than 500 laws, ranging from nuclear disarmament to deficit reduction. Will today's bitter partisanship hamstringing the new Congress' productivity?

[Social Security May Have Overpaid Disability Claims by \\$657M](#) // Charles S. Clark

Sampling shows failure to verify start of eligibility dates.

[Shutdown Roundup: Discounts for Furloughed Feds, Troubles in Indian Country and National Zoo Animals Need to Be Fed](#) // Ross Gianfortune

The shutdown is affecting civil servants, contractors and citizens throughout the United States as it enters its third week.

[What Habits Are You Building This Year?](#) // Scott Eblin

Here's what I'm learning from mine.

[More Than 25 Million Passport Numbers Stolen in Marriott Breach](#) // Caitlin Fairchild

About 5 million of those were unencrypted.

[Bill to Restore Full State, Local Tax Deduction Emerges in New Congress](#) // Bill Lucia

The "SALT" deduction was curbed by the GOP-backed tax law passed in late 2017.

[Lawmakers Reintroduce Legislation to Strengthen Federal CIO](#) // Frank Konkel

The bill would elevate the authority of the federal chief information officer and chief information security officer.

[Metros Should Focus on Attracting and Upskilling Workers in 'Opportunity Industries'](#) // Dave Nyczepir

There's a difference between a good job, a promising job and other jobs, particularly for people without bachelor's degrees, according to a recent Brookings report.

[Analysis: Democrats Are Wrong About Defense Spending](#) // Reihan Salam

The need for investment is only likely to grow in the coming years.

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From: [Martin, Andrew](#)
Subject: Bloomberg: Conservative Group Sues to Bring Right-to-Work to Airports
Date: Tuesday, January 8, 2019 1:51:50 PM



[Conservative Group Sues to Bring Right-to-Work to Airports](#)

- Koch-linked group sues to make airways, railways right-to-work
- SCOTUS left open question about private sector

By Hassan A. Kanu | January 8, 2019 01:50PM ET | Bloomberg Law

A conservative advocacy group has filed a lawsuit that will put airport and railway workers' unions on the defense and potentially threaten their survival within those industries.

The Mackinac Center filed a Jan. 8 [lawsuit](#) arguing that it is a free speech violation to require airline and railway workers who've declined to join the union representing their workplace to nonetheless pay partial fees to help cover the costs of collective bargaining.

The group, which has been [linked](#) to Republican mega-donors Charles and David Koch, joins other conservative groups arguing that the issue is about free speech because unions make political contributions that are funded by members' dues. Worker advocacy organizations say the ultimate goal of legal challenges like this is to starve unions of funds and eventually disband them altogether.

Unions are generally required by law to advocate for both dues-paying members and nonmembers in a particular workplace. They've historically collected 'fair-share' or 'agency fees' from non-members under decades-old U.S. Supreme Court precedent.

The Mackinac Center's lawsuit relies on the high court's recent decision to [reverse](#) that precedent in the public sector.

"In striking down agency fees in June 2018 for all public sector workers in *Janus v. AFSCME*, the Supreme Court indicated it was an open question whether that ruling prohibiting such fees would apply to railway and airline employees subject to the Railway Labor Act," the group said in a statement. "This suit is the first of its kind post-*Janus* to seek an answer to that question."

The Railway Labor Act governs employment relations in the airline and railway industries. Other conservative organizations are [working](#) to nix fair-share fees in the private sector entirely.

Unions represent about 34 percent of public sector workers, and about 6 percent in private industry. The lawsuit comes during a government shutdown that has raised concerns about airport workers and air travel safety, and as unions in both private and public sectors are still reeling from the effects of the *Janus* decision. The Mackinac Center brought the lawsuit against the International Association of Machinists and Aerospace Workers on behalf of three United Airlines employees. To contact the reporter on this story: Hassan A. Kanu in Washington at

hkanu@bloomberglaw.com

[Hassan Kanu News Alert](#)

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To: [Ring, John](#)
Subject: Daily Labor Report Highlights
Date: Tuesday, January 8, 2019 4:37:43 PM

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By Hassan A. Kanu

A conservative advocacy group has filed a lawsuit that will put airport and railway workers' unions on the defense and potentially threaten their survival within those industries.

[Wells Fargo Beats Termination Suit Tied to Cross-Selling](#)

By Jacklyn Wille

Wells Fargo Bank defeated an appeal by a Fort Lauderdale, Fla., employee who said she was fired for refusing to participate in the illicit sales practices that drove a 2016 national scandal and led to \$185 million in penalties.

[Patent Examiner Didn't Sue PTO Too Quickly, 4th Cir. Says](#)

By Patrick Dorrian

The U.S. Patent and Trademark Office will continue to face claims that it failed to fully accommodate a patent examiner's bulging back discs and related symptoms, a federal appeals court ruled.

[Dems Ask Watchdog to Investigate Teen Health-Care Work Proposal](#)

By Jaclyn Diaz

Congressional Democrats are turning up the heat on the Labor Department's proposal to ease restrictions for teenage workers in health-care settings.

DISCRIMINATION

[Pregnant Officer Forced to Do Fitness Run Will Get Bias Trial](#)

By Patrick Dorrian

A jury could find a Louisiana political subdivision violated a juvenile detention staff officer's job rights when it required her to run 1.5 miles as part of its semi-annual physical fitness testing, a federal court ruled.

[IBM Managers Discussed Ways to Thin Older Ranks, Documents Say](#)

By Gerrit De Vynck

International Business Machines Corp. managers discussed ways to make the company's workforce younger and move jobs overseas, according to a presentation filed in court recently.

[Disabled Walmart Pharmacist to Get Trial Over Immunization Rule](#)

By Patrick Dorrian

Walmart Stores Inc. must face trial on claims that it discriminated against a pharmacist with cerebral palsy and multiple sclerosis who was afraid to immunize customers, a federal judge ruled.

WAGE & HOUR

[Payday Lender Pays \\$75K to Settle Violations of Noncompete Law](#)

By Michael J. Bologna

Payday lender Check Into Cash of Illinois LLC will pay a \$75,000 penalty and abandon its illegal policies compelling low-wage workers to sign restrictive

noncompete covenants, under a consent decree with Illinois Attorney General Lisa Madigan (D).

STATE & LOCAL LAWS

[Michigan Split Between State, Local Salary Question Ban Rules](#)

By Alex Ebert

Asking about a job applicant's past or current salary is now off limits for Michigan state agencies until they give a conditional offer of employment.

[Wisconsin Prohibits LGBTQ Discrimination by State Agencies](#)

By Michael J. Bologna

Wisconsin Gov. Tony Evers in his first hours in office forbid state agencies to discriminate against their workers on the basis of sexual orientation and gender identity or to do business with contractors that exhibit such bias in hiring.

LABOR RELATIONS

[LA Teachers Close to Striking, Will Meet With District Jan. 9](#)

By David McAfee

Tens of thousands of teachers in Los Angeles intend to strike within the next week unless there's a dramatic shift from the school district.

[Unions at Work: Cleveland Orchestra Raises, Md. Police Agreement](#)

By Louis C. LaBrecque

Keep up-to-date with our weekly roundup of union initiatives, bargaining developments, leadership changes, and other labor news.

[Professors Issue Strike Notice at Large Ohio University](#)

By Alex Ebert

A faculty union at one of Ohio's largest universities is planning a strike, just as students are set to return for the spring semester.

[NLRB Weekly Summary of Cases, Dated Dec. 24-28, 2018](#)

Summary of NLRB Decisions for Week of December 24-28, 2018

IMMIGRATION

[White House Pressure Ended Protection for Haitians, Lawyer Says](#)

By Patricia Hurtado

Elaine Duke was up against a deadline to extend Temporary Protected Status for 50,000 Haitians in the U.S. and was inclined to do so, after repeated renewals since a massive earthquake in 2010 and a subsequent cholera outbreak devastated Haiti.

[Engineer's Lack of Degree Sinks Bid for 'Professional' Visa](#)

By Laura D. Francis

An Ohio-based engine manufacturer can't get a "professional" visa for a Japanese worker because he doesn't have a bachelor's degree, a federal judge in Ohio ruled.

[Farmers Sue Government to Stop Migrant Worker Wage Hike \(1\)](#)

By Chris Opfer

A farming industry group is suing the Labor Department to try to avoid having to pay temporary foreign workers as much as \$15 an hour.

NLRB

[NLRB Weekly Summary of Cases, Dec. 31-Jan. 4](#)

Summary of NLRB decisions for week of Dec. 31-Jan. 4.

HEALTH CARE & BENEFITS

[NYU Workers Enlist Former Judge in Bid for New Trial](#)

By Jacklyn Wille

New York University employees want a new trial in their \$358 million retirement plan lawsuit, because the judge who ruled against them returned to private practice with a member of NYU's board of directors.

[Labor Dept. Inks \\$378K Deal With Trustee Ahead of Trial](#)

By Jacklyn Wille

The Labor Department secured a \$387,000 settlement with the former trustee of a government contractor's health plan.

[Reliance Trust Loses Round in DOL's Kurt Manufacturing Suit](#)

By Jacklyn Wille

Reliance Trust Co. can't escape a Labor Department lawsuit over its handling of a \$39 million employer stock transaction by attempting to pull the selling shareholder's estate into the fray.

SAFETY & HEALTH

[Mo. Construction Contractor Fined \\$57K in Wake of Worker's Death](#)

By Christopher Brown

A Missouri construction company is facing \$56,910 in fines following an accident in which one of its workers was killed when a roof truss collapsed.

ALSO IN THE NEWS

[Labor Department Administrative Review Board Gets 3 New Members](#)

By Jaclyn Diaz

The Labor Department's Administrative Review Board is getting new members

after nearly five months with just one.

[Workplace Tattoos Here to Stay, Bans Tricky](#)

By Paige Smith

Tattoos or "body art," piercings, and beards are increasingly part of the norm in society at large, and employers' grooming and appearance policies seem to be slowly following suit—in part because of the legal risks involved. Walmart, Memorial Sloan Kettering Cancer Center, Marriott, and other companies have adopted more lenient policies over time, sometimes leaving final decisions to lower level managers.

[Gig Economy Growth Slower Than First Thought, Profs Say](#)

By Paige Smith

With the rise of Uber Technologies Inc., Airbnb Inc., and other alternative work arrangements, academics overinflated the potential of the gig economy, two of those very academics are now saying.

[Customs Worker Sues Government for Pay During Shutdown](#)

By Louis C. LaBrecque

A Customs and Border Protection officer who worked overtime on Dec. 22, the first day of the partial government shutdown, says the government is violating federal wage and hour law.

[EQT Cuts Jobs, Trims Costs as Activist Investors Seek CEO Ouster](#)

By Ryan Collins

EQT Corp., under pressure from activist shareholders calling for the top executive's ouster, has fired workers as part of a cost-cutting push the natural gas driller said will save it \$50 million a year.

[Global HR to Face Employee Background Check Privacy Action \(2\)](#)

By Daniel R. Stoller

Global HR Research Inc. can't evade claims that it violated credit reporting rules by releasing data from employee background checks to a hotel group without permission, a federal court ruled.

[U.S. Job Openings Fall to Five-Month Low, Still Exceed Jobless](#)

By Shobhana Chandra

U.S. job openings fell to a five-month low in November while still exceeding the number of unemployed Americans by almost 1 million, data consistent with a tight job market.

[Managers Pick Mini-Me Protoges of Same Gender, Race in New Study](#)

By Jeff Green

For those worried that the #MeToo movement has discouraged men from mentoring women at work, the Center for Talent Innovation has some news: There wasn't a lot of progress to roll back in the first place.

LATEST CASES

[Case: Labor Relations/Federal Preemption \(S.D.N.Y.\)](#)

An action by Cooper Union Federation of College Teachers, seeking to vacate the decision of the Cooper Union for the Advancement of Science and Art to reduce the number of class hours offered by the engineering school, will not be remanded to state court. The parties' collective bargaining agreement must be scrutinized to resolve inherent ambiguity and determine whether the school has the authority to modify the number of class hours (Cooper Union Fed'n of Coll. Teachers v. Cooper Union for Advancement of Sci. & Art, 2019 BL 3719, S.D.N.Y., No. 18-CV-05891(VEC), 1/7/19).

[Case: Individual Employment Rights/Privacy \(Pa. Commw. Ct.\)](#)

A Philadelphia police officer, who challenged the validity of his psychological evaluation and his removal from the list of eligible candidates for promotion, will have another chance to pursue his cause, after a trial court improperly

dismissed his local agency appeal on its own authority as a sanction for his not filing a brief by a deadline the court set in its scheduling order. The police officer argued that the Philadelphia Civil Service Commission wasn't harmed by his failure to file a brief. His case wasn't moot even though the list he sought to have his name restored to expired years ago, because he claimed his psychological evaluation wasn't scored in the manner prescribed by a personnel manual, and the psychologist who evaluated him admitted she used outdated methods and the data did not support his low score. The case is *Cook v. City of Philadelphia*, 2019 BL 3584, Pa. Commw. Ct., 638 C.D. 2017, 1/7/19.

[Case: Discrimination/Hiring \(N.D. Ohio\)](#)

An adjunct professor at Youngstown State University whose contract wasn't renewed didn't show that he was rejected from a position as director of dual enrollment and student support services because of his age rather than for not meeting the minimum educational requirements for the position, a court said. The chosen applicant was younger, and he alleged that she was pre-selected for the position by a department chair, with whom she had been a close friend and student, but the court said that he didn't show how her pre-selection was a result of age bias. The case is *George v. Youngstown State Univ.*, N.D. Ohio, 4:17CV2322, 1/7/19

[Case: Wage & Hour/Wage Payment \(N.J. Super. Ct. App. Div. \)](#)

A New Jersey dental clinic may have to pay more than the \$3,622 a trial court found it owes in unpaid wages to a dentist, because the court didn't explain whether it considered the clinic's lack of evidence refuting her claim that she didn't receive any pay for two periods, nor did it explain how it arrived at a lower amount than she says she's owed. The case is *Dental Care of Stratford v. Harmon*, 2019 BL 3614, N.J. Super. Ct. App. Div., A-3065-17T2, unpublished 1/7/19.

[Case: Discrimination/Promotion \(D.D.C.\)](#)

A black female employee for the U.S. Department of the Treasury didn't get a trial on her claim that a white male employee was promoted instead of her because of race and sex discrimination. A ranking panel consisting of a white

male and black female subject matter expert determined that the chosen applicant was better qualified, and the court said that a supervising director's decision to use experts, rather than unilaterally selecting a candidate, indicated a lack of bias, not an attempt to cover it up. The case is *Lewis v. Mnuchin*, D.D.C., No. 1:16-cv-02437 (TNM), 1/7/19.

[Case: Wage & Hour/Settlement Agreements \(S.D.N.Y.\)](#)

A lawn care technician and Scotts Co. must revise their settlement of the technician's unpaid overtime claim, because documents he submitted of his work hours don't clearly establish whether the settlement sum of \$29,566 is a fair recovery amount. The case is *Arango v. The Scotts Co.*, 2019 BL 4700, S.D.N.Y., No. 17-CV-7174 (KMK), 1/7/19.

[Case: Discrimination/Jurisdiction \(Fed. Cl.\)](#)

The U.S. Court of Federal Claims doesn't have the authority to hear a U.S. Department of Veterans Affairs employee's Equal Pay Act claim, because that claim was transferred from her pending employment discrimination suit in a California federal court, and a federal statute prohibits the Court of Federal Claims from hearing claims that arise from the same set of facts as are found in pending claims against the U.S. in other courts—which is the case with the claims remaining in the California federal court. The case is *Philbert v. United States*, 2019 BL 4593, Fed. Cl., 18-920C, 1/7/19.

[Case: Wage & Hour/Collective Certification \(E.D. Ark.\)](#)

Field workers for a national utility contractor who worked at its Arkansas yard showed that they have sufficiently similar unpaid overtime claims to move forward with their collective action, because one potential member said that he and other field workers weren't paid for time they spent loading and unloading tools at the yard. The case is *McChesney v. Holtger Bros.*, 2019 BL 4839, E.D. Ark., 4:17-cv-00824-KGB, 1/7/19.

[Case: Discrimination/Retaliation \(Mass. App. Ct.\)](#)

A former correctional officer for the Massachusetts Department of Correction couldn't show that she was fired in retaliation for filing employment discrimination charges in two different state agencies. Before she filed the

charges, another officer issued a report alleging that she had been insubordinate, she had a long disciplinary history, and the fact that she was fired less than six months after filing the charges doesn't itself indicate a discriminatory motive. The case is *Ogaldez v. Dep't of Corr.*, 2019 BL 5410, Mass. App. Ct., No. 17-P-742, 1/8/19.

[Case: Discrimination/Motion to Alter Judgment \(E.D. Mich.\)](#)

After a female former employee obtained a jury verdict against Vaive Wood Prods. Co., a court reduced her nominal damages from \$10,000 to \$6,700 in light of newly-discovered evidence. Vaive alleged that a previously unavailable parental-rights case from probate court would have affected the jury's consideration of her claim of emotional distress, and the court said it couldn't determine how much harassment had altered her relationship with her children, because it would be reasonable to infer that six years in foster care would affect a child's relationship with a parent. The case is *Murphy v. Vaive Wood Prods. Co.*, E.D. Mich., No. 2:17-cv-11513, 1/7/19

[Case: Individual Employment Rights/Wrongful Discharge \(S.D. Miss.\)](#)

Disability Rights Mississippi, Inc. and its executive director may dismiss third-party claims by two former employees seeking injunctive relief on behalf of disabled and mentally-ill children whose educational services have been reduced by the nonprofit organization, because child advocates lack standing to pursue those claims, and the disabled children are able to act through parents or guardians. However, the employees' claims for wrongful discharge against public policy under Mississippi law survive, because they suffered an actual injury when they were demoted for insubordination for trying to meet with the board of directors to express their concerns, and were fired for refusing to sign a statement admitting to their insubordination. The case is *Cannimore v. Disability Rights Miss., Inc.*, 2019 BL 4502, S.D. Miss., 3:18-CV-174-DPJ-LRA, 1/7/19.

[Case: Discrimination/Retaliation \(M.D. Ga.\)](#)

A former employee may not proceed with his claim that a car dealership in Georgia refused to rehire him in retaliation for helping his fiancé complain of racial and national origin discrimination. The employee didn't show that the

general sales manager who was in charge of the hiring decision was aware of his former complaint when making the hiring decision, the court said. The case is *George v. Kia Autosport of Columbus, Inc.*, 2019 BL 4829, M.D. Ga., No. 4:17-CV-193 (CDL), 1/7/19.

[Case: Discrimination/Discharge \(N.D. Ala.\)](#)

A black former server and hostess at KMG Enterprises can't proceed on her claim that she was fired because of her race, even though her co-worker regularly used the n-word in the presence of her supervisors and one supervisor called her "Aunt Jemima." She didn't allege any wrongful conduct on the part of the supervisor who actually fired her, and she provided no other details of her firing. The case is *Spears v. KMG Enters., Inc.*, 2019 BL 4814, N.D. Ala., No. 1:18-CV-01548-KOB, 1/7/19.

[Case: Wage & Hour/Minimum Wages \(E.D. La.\)](#)

A temporary worker for a Louisiana hospitality staffing firm made a claim for unpaid minimum wages under federal law, despite the fact that her pay rate was well above minimum wage, because she said she hasn't received any pay for several months' work. The case is *Williams v. Superior Hosp. Staffing Inc.*, 2019 BL 4990, E.D. La., 18-2793 SECTION: "H", 1/7/19.

[Case: Individual Employment Rights/Contracts \(D.N.M.\)](#)

A iOS application developer who contracted with Armada Group to provide technical services to its clients didn't show that Armada and its officers fired him based on a pending felony charge that wasn't a conviction in violation of a California law, or intentionally interfered with his so-called "implicit contract" with TP-Link. Armada gave the results of his background check to TP-Link, and as a result his work assignment was terminated. The software developer was ultimately convicted of the criminal charges so he was not protected by state law, and no implied contract existed between him and Armada's client, because their work relationship was already governed by written contracts, and Armada had a financial interest in any alleged "implied contract" with its client. The case is *Channon v. Tavangar*, 2019 BL 4621, D.N.M., 1:18-CV-00596-WJ-KBM, 1/7/19.

[Case: Discrimination/Discharge \(E.D. Ark.\)](#)

A black quality assurance coordinator for the Arkansas Department of Human Services, Department of Youth Services, can go to trial on his claim that he was fired because of race discrimination, rather than allegedly mishandling sensitive information in violation of DHS policies. The coordinator presented evidence that his supervisor was involved in several incidents where two white employees were disciplined less harshly for similar infractions, and the court disagreed with DHS's assertion that the coordinator's position had a higher level of importance regarding children's welfare and safety. The case is *McBride v. Ark. Dep't of Human Servs.*, E.D. Ark., 4:17-cv-00378-KGB, 1/7/19.

[Case: Discrimination/Constructive Discharge \(E.D. Pa.\)](#)

A patient resource representative in her 60s couldn't show that Maine Line Health in Pennsylvania forced her to quit because of her age following an incident in which she registered the wrong patient for a blood test. The company threatened her with termination if she committed further errors but gave her the option to resign without losing her pension, she admitted that all representatives—regardless of age—were held to the same standards and that the company had recently began an internal campaign to ramp up worker productivity. The case is *Gillespie v. Main Line Health*, 2019 BL 4637, E.D. Pa., 18-60, 1/7/19.

[Case: Discrimination/'Employer' \(M.D. Fla.\)](#)

Further discovery is required to determine whether a white former hotel housekeeper at a Florida hotel can proceed on her claim alleging that the organization that owned the hotel and the hotel's management services company should be held jointly responsible for race discrimination. The housekeeper alleged that she was fired because she wasn't Hispanic and didn't speak Spanish, but because there hasn't yet been enough fact-finding, the court can't determine how much control, if any, the two companies had over her employment. The case is *Follese v. Jassas Capital LLC*, 2019 BL 4883, M.D. Fla., No. 2:18-cv-40-FtM-99MRM, 1/7/19.

[Case: Disability Discrimination/Essential Functions \(W.D. Wash.\)](#)

A Wal-Mart pharmacist with cerebral palsy and multiple sclerosis can go ahead

with disability bias and failure-to-accommodate claims after she was fired due to her inability to perform in-store immunizations, because there are questions as to whether giving flu shots is an essential job function and whether Wal-Mart properly considered the pharmacist's accommodation suggestions. The case is *Jacobs v. Wal-Mart Stores, Inc.*, 2019 BL 4994, W.D. Wash., No. 3:17-cv-05988-RJB, 1/7/19.

[Case: Discrimination/Accommodation \(E.D. La.\)](#)

A female staff officer may proceed with her claim that the Florida Parishes Juvenile Justice Commission in Louisiana refused to accommodate her during her pregnancy when it didn't allow her to be excused from a physical fitness test even with a doctor's note. The officer's assertions that her supervisor told her that she would have to complete the fitness test and that the Commission allowed non-pregnant employees with physical limitations to be excused from the test could show that it failed to accommodate her during her pregnancy, the court said. The case is *Thomas v. Fla. Par. Juvenile Justice Comm'n*, 2019 BL 4987, E.D. La., 18-2921 SECTION "F", 1/7/19.

[Case: Discrimination/Retaliation \(N.D. Ala.\)](#)

An employee at Intergraph Corp. can go to trial on a claim that she was laid off in retaliation for complaining about, and participating in an investigation of an anonymous person writing "Asian Sluts" on a men's room wall, as well as the employee's first name. A one-month gap between her complaint and layoff was close enough to create a presumption of causation, the court said, and the employee called into question the company's assertion that her skill set wasn't compatible with her team, pointing to positive performance reviews and the fact that an immediate supervisor she accused of sexual harassment might have influenced his own supervisor's decision to let her go. The case is *Xueyan Zhou v. Intergraph Corp.*, 2019 BL 4842, N.D. Ala., Civil Action Number 5:17-cv-01033-AKK, 1/7/19

[Case: Disability Discrimination/Medical Examination \(D. Neb.\)](#)

An ex-security officer at a nuclear power plant in Nebraska can't go ahead with his disability bias claim after his unescorted access to the plant was revoked when it came to light at his annual physical that he was taking a different drug

for anxiety than the Prozac he disclosed when he was hired, even though he was qualified to do the job until denial of access led to his firing. Not only did he initially list the wrong drug, but he also failed to list any anti-depressants at all for the next two years, so it was his untruthfulness and not his disability that caused his firing, the court found. The case is *Martin v. Omaha Pub. Power Dist.*, 2019 BL 4393, D. Neb., 8:17CV347, 1/4/19.

[Case: Discrimination/Timeliness \(9th Cir.\)](#)

A valet at the Venetian Casino Resort LLC was too late in bringing an employment discrimination complaint under Title VII of the Civil Rights Act, and he wasn't entitled to equitable tolling of his claim, a court said. The EEOC sent a right-to-sue notice to the valet's address and to Venetian's attorney, but the valet failed to tell his attorney, and the appellate court said that the EEOC wasn't required to send notice to his attorney, and that the lower court didn't abuse its discretion by concluding that his situation didn't present an "extraordinary circumstance" warranting tolling. The case is *Lee v. Venetian Casino Resort, LLC*, 9th Cir., 17-17552, 1/7/19.



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From: [GovExec Today](#)
To: [Ring, John](#)
Subject: Financial fears of furloughed and excepted feds; the shutdown's effect on security clearances
Date: Tuesday, January 8, 2019 5:32:30 AM

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GovExec Today

January 8, 2019



[Federal Workers Recount Concerns Over Transit Payments, Qualifying for Mortgages and Other Shutdown Impacts](#) // Erich Wagner

"It's not just about us; it's the people we serve and what the mission is," said one employee at a roundtable hosted by Sen. Chris Van Hollen.

[If the Shutdown Derails Your Finances, It Could Affect Your Security Clearance](#) // Lindy Kyzer

Don't panic, but don't go on a shopping spree either. Money issues cause more clearance denials and revocations than all other issues combined.

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[A Shutdown-Era Visit to Park Service Ops at Trump's D.C. Hotel](#) // Charles S. Clark

Old Post Office tower remains open despite the lapse in appropriations.

[IRS Faces Busiest Season Under New Tax Law With a Mostly Furloughed Workforce](#) // Charles S. Clark

The White House said Monday the IRS will call back some employees, unpaid, to process 2018 tax refunds this month.

[As Shutdown Talks Stall, Democrats Try a New Tactic to Open Some Agencies](#) // Eric Katz

Trump says feds are still with him and can call in sick if that's "what they have to do."

[Federal Employees Did not Sign Up to be Shut Down](#) // Donald Moynihan

The current impasse reflects a pattern of mismanagement of public service talent under the Trump administration.

[Democratic-Run House Creates New Whistleblower Ombudsman](#) // Charles S. Clark

Advocates praise new option for agency employees who feel gagged.

[An Immigrant's Journey to Congress](#) // Timothy B. Clark

An inside look at swearing-in day.

[Trump Administration Delays End of Pay Freeze for Political Appointees](#) // Erich Wagner

The salaries of the vice president, Cabinet-level officials and other political appointees were due to increase for the first time since 2013 as a result of the partial government shutdown.

[Shutdown Roundup: TSA Workers Call in Sick, Free Classes For Feds and Park Funding Concerns](#) // Ross Gianfortune

The shutdown continues to have far-reaching effects.

[Would Bringing Back Pork-Barrel Spending End Government Shutdowns?](#) // Diana Evans

Banned since 2011, pork-barrel spending may well help Congress pass bills on schedule. Now, a powerful Democratic lawmaker said she'd like to resurrect the practice to make passing budgets easier.

[Survey: Americans Warming to Use of Facial Recognition Tech](#) // Frank Konkel

Americans do not favor strict limits on facial recognition technology, according to a new national survey.

[Places Where Flu Activity Has Been the Highest](#) // Michael Grass

Many localities haven't yet felt the full brunt of influenza season.

[Beware of Apple Support Phishing Scams](#) // Caitlin Fairchild

Don't take the bait.

[Some Drug Users in Western U.S. Seek Out Deadly Fentanyl. Here's Why.](#) // Christine Vestal

Some drug users report actually opting for the the synthetic opioid, which experts in many places have linked with many overdoses.

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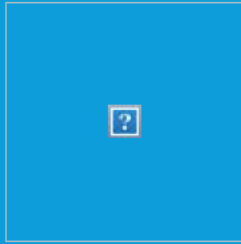
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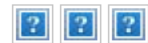
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From: [Bloomberg Law Daily Labor Report](#)
To: [Ring, John](#)
Subject: First Move: Teen Health Work Probe Sought • Tattoo Bans Still Tricky
Date: Tuesday, January 8, 2019 7:07:39 AM



What you need to know to start your day.

Teen Health Work Probe Sought • Tattoo Bans Still Tricky



By [Patricio Chile](#)

DEMS URGE TEEN HEALTH WORKER AUDIT

Five members of Congress requested the Labor Department's Inspector General Scott Dahl to launch an audit of the agency's rulemaking process for a proposal that would allow 16- and 17-year-olds who work in nursing homes or hospitals to operate machines that lift patients from beds, without supervision.

If OIG launches an audit, it would be the second DOL policy to get such scrutiny, Jaclyn Diaz [reports](#). The OIG already is auditing the DOL's handling of a regulation for tipped workers.

TATTOO TABOO IN THE WORKPLACE?

Tattoos might seem to be everywhere, but displaying ink at work is more regulated than one might presume.



A man gets a temporary tattoo at the Progressive International Motorcycle Show at the Javits Center on Dec. 9, 2016 in New York City.
Photo by Spencer Platt/Getty Images

The prevalence and societal acceptance of tattoos hasn't mitigated litigation, though, and some argue that new constitutional defenses could be tried in court, Paige Smith [reports today](#). Even unions are defending workers who push back against tattoo policies, as many advocates say that times are changing and policies should follow suit.

OTHER STORIES WE'RE WATCHING

- This week's Unions at Work column looks at a new three-year contract between the **Cleveland Orchestra** and about 100 full-time musicians, an upcoming ratification vote by the **Maryland highway police**, and a unionization vote by about 500 General Mills employees. [Read it here](#), and

keep up to date every week with our roundup of labor news.

- Should nonunion educators be allowed to participate in **union negotiations**? Three UMass professors and a middle school teacher will argue before the Massachusetts Supreme Judicial Court that barring non-union members from having a “voice and a vote” in negotiations violates the First and 14th amendments. Aaron Nicodemus is following the developments.
- The **National Labor Relations Board** issued its weekly summary of cases for Dec. 24-28, 2018. Check it out later today.

AROUND THE WEB

- With more than 30,000 **teachers union** members set to strike this week, the Los Angeles Unified School District is getting ready to bring in highly paid substitutes, supervise students in spaces such as auditoriums, and ease background checks for parent volunteers, [the Los Angeles Times reports](#).
- Lowe’s announced plans to hire more than 65,000 new people in 2019, some permanently and some on a seasonal basis, [CNBC reports](#).
- As the **government shutdown** continues, many affected federal employees and contractors are taking to social media to vent their frustrations about tighter budgets, layoffs, and lost productivity, [the Boston Globe reports](#).
- Wisconsin is facing a shortage of **child care workers** as employees leave the industry to look for higher paying jobs, [WMTV reports](#).

For all of today's Bloomberg Law headlines, visit [Daily Labor Report](#)



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From: [Martin, Andrew](#)
Subject: Legal News FYI 01-08-19
Date: Tuesday, January 8, 2019 8:17:15 AM
Attachments: [image001.png](#)

Tuesday, January 8, 2019

Teen Health Work Probe Sought • Tattoo Bans Still Tricky

BloombergLaw - Daily Labor Report 08 Jan 2019 07:06

By Patricio Chile Dems Urge Teen Health Worker Audit Five members of Congress requested the Labor Department's Inspector General Scott Dahl to launch an audit of the agency's rulemaking process for a proposal that would allow 16- and 17-year-olds who...

D.C. Circuit "Refines" the NLRB's Joint Employer Test

JD Supra: Labor & Employment Law 07 Jan 2019 15:26

In a 2-1 decision issued December 28, 2018, the United States Court of Appeals for the District of Columbia Circuit upheld the National Labor Relations Board's (NLRB's) determination that both an employer's reserved authority to control and its... By:...

Can Pat Shanahan Serve as 'Acting' Defense Secretary Forever?

Defense One 07 Jan 2019 14:36

"Indefinitely" is how long the Trump administration contends that Deputy Defense Secretary Patrick Shanahan can fill the role of his departed boss, Jim Mattis. President Trump has said he is in "no hurry" to replace Shanahan and his numerous fellow...

New Jersey Workers Pine For Paychecks Amid Government Shutdown

Montclair Patch (Montclair, NJ) 07 Jan 2019 13:43

As many as 20,000 federal workers in New Jersey may be waiting with tied hands for much-needed paychecks as the U.S. government shutdown drags on for a third week, recently released statistics show. Altogether, 20,625 Garden State residents are employed...

AT&T eliminated more than 10,000 US jobs in 2018, union says

The Hill (Washington, DC) 07 Jan 2019 12:20

Telecommunications giant AT&T eliminated more than 10,000 U.S. jobs last year and outsourced some of those positions to contractors overseas, the Communications Workers of America (CWA) said in a report released Monday. CWA for months has raised...

Company didn't violate NLRA by calling police on union reps

HR Dive 07 Jan 2019 11:26

Brief Author By Lisa Burden Published Jan. 7, 2019 Dive Brief: A Pennsylvania-based laundry company did not violate the National Labor Relations Act (NLRA) when it asked police to remove union organizers from an area of a public road that it mistakenly...

DC Circuit Upholds Part of NLRB's 2015 Joint Employer Analysis, Pans its Ambiguous Application to Facts

Thomson Reuters Practical Law : Labor & Employment 07 Jan 2019 00:00

In *Browning-Ferris Industries of California, Inc. v. NLRB*, the majority of a three-judge panel of the US Court of Appeals for the District of Columbia Circuit affirmed in part the National Labor Relations Board's (NLRB) joint employer standard, but...



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From: [Morning Shift](#)
To: [Ring, John](#)
Subject: POLITICO's Morning Shift: Prime-time border push — Terrorists on the southern border? — TSA agents to quit
Date: Tuesday, January 8, 2019 10:04:18 AM

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2018 Newsletter Logo: Morning Shift



01/08/2019 10:00 AM EDT

By REBECCA RAINEY (rrainey@politico.com; [@RebeccaARainey](#))

Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click [here](#).



QUICK FIX

President Donald Trump will deliver a 9 p.m. address tonight on the "crisis" at the U.S. Mexico border and will travel to the border Thursday, signaling he's in no mood to back down on keeping the government partially closed until Congress agrees to allocate \$5.7 billion for his proposed border wall.

— **Contrary to White House press secretary Sarah Sanders'** suggestion that the U.S. last year stopped thousands of suspected terrorists from crossing the southern border, U.S. Customs and Border Protection data show the real number was 41, of which all but six were U.S. citizens or lawful permanent residents.

— **As the government shutdown stretches into its third week**, an airport trade group said it expects TSA agents will soon begin to quit.

— **McDonald's workers in Florida will walk off the job** today to demand greater protections after a worker was attacked by a customer.

GOOD MORNING! It's Tuesday, Jan. 8, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to rrainey@politico.com, thesson@politico.com, ikullgren@politico.com and tnoah@politico.com. Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren) and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

DRIVING THE DAY

PRIME-TIME BORDER PUSH : Trump plans "two PR moves" to address the U.S.-Mexico border, Burgess Everett and Rebecca Morin report, including a national address tonight and a trip to the border Thursday. Vice President Mike Pence and Homeland Security Kirstjen Nielsen will visit the Capitol Wednesday to "try and rally House Republicans to stick with the president before the House votes on Democratic spending bills designed to reopen portions of the government." The White House is still considering whether to declare a national emergency to sidestep congressional approval, Pence told reporters Monday. More from Everett and Morin [here](#). Read a November report by POLITICO's Timothy Noah on how statistics contradict the administration's crisis rhetoric [here](#).

TERRORISTS ON THE SOUTHERN BORDER?: If the president says in his speech tonight that thousands of suspected terrorists were last year prevented by Border Patrol from entering the U.S. from Mexico, don't believe it. "Nearly 4,000

known or suspected terrorists come into our country illegally, and we know that our most vulnerable point of entry is the southern border," Sarah Sanders [said](#) on Fox News Sunday, prompting immediate pushback from host Chris Wallace, who noted that figure described all U.S.-bound people stopped at airports around the world. (Wallace was ready because Sanders had said something about this a few days earlier that was more explicitly false.)

NBC says it has CBP's real number, and it's well short of 100. "Overall, 41 people on the Terrorist Screening Database were encountered at the southern border from Oct. 1, 2017, to March 31, 2018," reports NBC's Julia Ainsley, "but 35 of them were U.S. citizens or lawful permanent residents." That leaves six persons who were either undocumented or on temporary visas who were suspected of being terrorists. More from NBC News [here](#). Read fact checks of all of the administration's statements about terrorists at the southern border from the Associated Press [here](#) and from the Washington Post [here](#).

THE SHUTDOWN LOWDOWN

TSA AGENTS TO QUIT: "An airport trade group said it expects TSA agents will begin quitting if a government shutdown stretches on much longer and wants the agency to use fees it's collecting from air carriers to pay screeners," POLITICO's Stephanie Beasley reports. "Airports Council International-North America told POLITICO Monday that it's pressing TSA to use passenger security fees to maintain its operations during the partial shutdown." More [here](#).

FEDERAL WORKERS TO RALLY IN FRONT OF WHITE HOUSE: At noon this Thursday more than two dozen unions will host a rally and march to the White House calling for an end to the partial government shutdown. Read a flyer about the march [here](#).

GLOBAL ENTRY PROGRAM GRINDS TO A HALT: "The Department of Homeland Security has canceled all interviews during the government shutdown for people trying to enroll in the Global Entry program that lets travelers go through speedier security lines at airports," POLITICO's Jennifer Scholtes reports. More [here](#).

UNIONS

STRIKES IN FLORIDA: McDonald's workers in Florida will strike today at 11 a.m.

to demand that the fast-food giant and other chains implement workplace violence training and safety protocols after a customer grabbed a St. Petersburg McDonald's employee, Yasmine James. The incident was captured on video and [according to WFLA](#), the customer was arrested on Dec. 31. Dozens of workers organized by the Fight for \$15 will walk off the job in St. Pete.

VISA WEBSITE UP AND RUNNING: The Labor Department's visa application website for employers seeking temporary foreign workers was back online Monday after the website crashed Jan. 1 from a flood of applications. According to DOL, within the first 30 minutes the system "successfully handled the submission of approximately 4,195 H-2B applications covering more than 79,500 workers positions."

LAYOFF WATCH: The Dallas Morning News laid off 43 employees Monday, following an 18.9 percent decline in revenue through the first nine months of 2018, Maria Halkias reports for the Dallas Morning News. "The overall staff reduction represents about 4 percent of the 978 employees working for the News' parent company, A. H. Belo Corporation," according to Halkias. Half those job cuts came from the newsroom. More [here](#).

INCREDIBLE SHRINKING GIG ECONOMY: Alan Krueger of Princeton University and Lawrence Katz of Harvard will say in a working paper to be released this week that they overestimated the size of the so-called gig economy, Josh Zumbrun reports for the Wall Street Journal. The study was called into question after the Bureau of Labor Statistics [reported in May](#) that the gig economy has actually been shrinking since 1995. More from the Journal [here](#).

HARASSMENT IN THE COURTS: Senate Judiciary Committee Democrats, in a Jan. 3 letter, urged the federal judiciary to improve how it handles claims of sexual harassment. Read the letter [here](#).

COFFEE BREAK

— "Migrants' Despair Is Growing at U.S. Border. So Are Smugglers' Profits." from [The New York Times](#)

— "E-Verify Expired During Government Shutdown," from [SHRM](#)

— "Hillary Clinton: 'Likability' discussion around female candidates 'takes me back,'" from [POLITICO](#)

—"Broadway actors' union strikes over developmental labs," from [The Washington Post](#)

—"Trump's government was a very bleak workplace for many. Then it shut down."
from [The Washington Post](#)

THAT'S ALL FOR MORNING SHIFT!

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Subject: Supreme Court Swats Away 2 Employment Cases
Date: Tuesday, January 8, 2019 3:54:32 AM



EMPLOYMENT

Tuesday, January 8, 2019



TOP NEWS

Supreme Court Swats Away 2 Employment Cases

The U.S. Supreme Court turned aside a pair of employment cases Monday, declining opportunities to clarify the burden of proof for parties in certain Americans with Disabilities Act cases and to rule on whether judges can use information they seek out from company websites without first notifying the parties in a case. [Read full article »](#)

Supreme Court Again Pushes Back 3 LGBT Bias Petitions

The U.S. Supreme Court on Monday pushed back a closely watched trio of petitions asking whether federal workplace discrimination law protects LGBT workers, relisting them for consideration at its upcoming judicial conference Friday after having failed to act on them following its most recent conference last week. [Read full article »](#)

ABM To Pay \$5.4M Over Required Worker Cellphone Use

Facility management company ABM Industries Inc. has agreed to pay \$5.4 million to end a California federal class suit alleging it violated state law by making cleaning employees use their personal cellphones for work without reimbursing them. [Read full article »](#)

Colo. Can't Dodge Masterpiece Baker's Bad Faith Suit

Colorado officials must face a lawsuit filed by the baker who won a landmark U.S. Supreme Court LGBT rights case last year, a federal judge has ruled, saying the state's second discrimination complaint against him was likely brought in bad faith. [Read full article »](#)

Big Apple Eateries Freed From No-Tip Conspiracy Case

Several upscale New York restaurants and their celebrity chefs can slip a suit alleging they cooked up a no-tipping scheme to boost menu prices, a federal judge ruled Monday, adding if a fresh complaint against the eateries isn't filed by the end of January, the case will be closed. [Read full article »](#)

DISCRIMINATION

Ex-Atty For Mitsubishi Blasts Bid To Nix Gender Bias Suit

A former in-house attorney at a Mitsubishi Chemical Corp. unit pushed back Friday against a motion to have her suit accusing the company of gender discrimination tossed out of New York federal court. [Read full article »](#)

FEMA Supervisor Left Job Too Soon To Keep Harassment Suit

The U.S. Federal Emergency Management Agency on Friday dodged sexual harassment and retaliation claims by an employee who says she was fired for reporting fraud while deployed for natural disaster aid after an Illinois federal judge found she didn't suffer an adverse action before resigning. [Read full article »](#)

NJ, Gov. Campaign Accused Of Mishandling Rape Claim

A New Jersey housing official on Monday launched a lawsuit alleging the state and the campaign of Gov. Phil Murphy mishandled her claim that she

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was raped by a former campaign staffer who later got a high-ranking position within the administration. [Read full article »](#)

United Airlines Workers Say Short Military Leave Deserves Pay

United Airlines Inc. and United Continental Holdings Inc. were hit with a proposed class action in Illinois federal court Monday alleging that they flouted a federal anti-discrimination law by not paying regular wages to workers who took short-term military leave or crediting that time toward a profit-sharing program. [Read full article »](#)

WAGE & HOUR

\$1.3M Settlement Reached In MLB's Streaming Unit OT Suit

MLB Advanced Media has agreed to pay roughly \$1.3 million to settle claims that it routinely stiffed its video editors for years on overtime pay, after a former employee hit the powerhouse streaming specialist with a proposed class and collective action last spring. [Read full article »](#)

LABOR

Union Seeks Arbitration Redo In Disney World Servers' Suit

A union argued Monday that state and federal law supports a Florida federal court vacating an arbitration award and appointing a new arbitrator in a dispute over tip calculations for Walt Disney World restaurant servers because the appointed arbitrator allegedly failed to timely conclude the underlying dispute. [Read full article »](#)

NONCOMPETES

H&R Block Fights MDL Push For 'No Poach' Pact Suits

H&R Block Inc. has told the U.S. Judicial Panel on Multidistrict Litigation that there's no reason to consolidate five potential class actions over noncompete contracts and "no poach" agreements, arguing the cases aren't spread out enough and will be even less so when half wind up in arbitration. [Read full article »](#)

WHISTLEBLOWER

High Court Denies Gilead FCA Case After DOJ Thumbs-Down

The U.S. Supreme Court on Monday chose not to hear a prominent False Claims Act case linking Gilead Sciences Inc. to sketchy drug manufacturing, a move that follows the U.S. Department of Justice's bombshell vow to end the whistleblower-led litigation. [Read full article »](#)

PEOPLE

Morgan Lewis Adds Immigration Attys From Baker McKenzie

Morgan Lewis & Bockius LLP said Monday that it has added two labor and immigration attorneys previously with Baker McKenzie, one as a partner in Washington, D.C., and one as of counsel in Miami. [Read full article »](#)

EXPERT ANALYSIS

A Small Step Toward 'Employee' Clarity For FCRA

An Iowa federal court's recent decision in *Smith v. Mutual of Omaha Insurance Company* limits the Fair Credit Reporting Act requirements associated with a consumer report obtained for employment purposes to its logical statutory definition. Yet, companies hiring independent contractors are not entirely out of the woods, say attorneys with Troutman Sanders LLP. [Read full article »](#)

Opinion

Ending Arbitration Pacts For Harassment Claims Isn't Enough

Several tech companies recently ended policies that forced arbitration for

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internal sexual harassment claims, but a closer look at these changes indicates there's still a long way to go before workers are treated as fairly as possible, says Tom Spiggle of the Spiggle Law Firm. [Read full article »](#)

'Flexible Work' Makes Freelancing More Viable In BigLaw

The rise of remote work capabilities and advances in technology are making flexible, freelance legal work a more accessible career option for corporate attorneys, say Elizabeth Black and Sara Eng of InCloudCounsel. [Read full article »](#)

Opinion

A Call To Permit Judicial Substitution In MDL Proceedings

While several proposed changes to multidistrict litigation procedures may be warranted and appropriate, consideration should be given to a modest modification of the judicial selection process, says Doug Smith of Kirkland & Ellis LLP. [Read full article »](#)

LEGAL INDUSTRY

Justice Ginsburg Misses High Court Arguments For First Time

Justice Ruth Bader Ginsburg missed oral arguments Monday morning for the first time in her quarter-century on the U.S. Supreme Court, spending the day working from home while she recovers from cancer surgery last month. [Read full article »](#)

Judiciary Pushes Back Day It Will Go Broke Over Shutdown

The U.S. judiciary has pushed back the date it is expecting to run out of money over the government shutdown to next week, increasing the chances that the impasse will resolve before courts may have to start cutting staff and delaying litigation. [Read full article »](#)

High Court Would Get Ethics Code Under Dems' Proposed Bill

The first bill introduced in the House by the newly sworn-in 116th Congress would impose ethics rules on U.S. Supreme Court justices for the first time. [Read full article »](#)

The 3 Hottest Regions For BigLaw Acquisitions In 2018

In a record-breaking year for law firm mergers that saw the industry log 106 total tie-ups, three regions stood out in 2018 as epicenters of activity for the largest firms, according to a report released Monday. [Read full article »](#)

Clyde & Co Launches Program To Level Gender Imbalance

Clyde & Co LLP on Monday launched a new global training program geared primarily toward its female lawyers to increase gender balance in its marketing, communications and business development activities as part of its efforts to present a more diverse brand to its clients. [Read full article »](#)

Retirement Group Nabs Eversheds Sutherland Atty As GC

The American Retirement Association has beefed up its governmental affairs team by scooping up an attorney from Eversheds Sutherland to work as the group's general counsel and putting an ex-Employee Retirement Income Security Act Industry Committee professional in a lobbying role, the group announced Monday. [Read full article »](#)

Interview

15 Minutes With Choice Hotels' General Counsel

Before moving in-house, Simone Wu worked for five years at Skadden, where she counted large media and technology companies among her clients. Now as the general counsel of Choice Hotels, she shares her thoughts on her preference to be more of a generalist than a specialist, the shifting role of corporate legal departments to function as businesses and her ideal vacation. [Read full article »](#)

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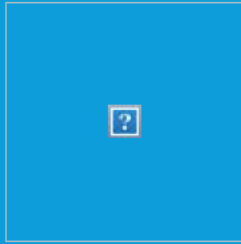
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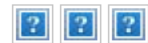
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From: [Bloomberg Law Daily Labor Report](#)
To: [Ring, John](#)
Subject: First Move: Sexual Orientation Bias Tested • Lockout End Shows Damage
Date: Wednesday, January 9, 2019 7:07:25 AM



What you need to know to start your day.

Sexual Orientation Bias Tested • Lockout End Shows Damage



By [Patricio Chile](#)

HETEROSEXUAL WOMAN TRIES TO REVIVE BIAS CASE

A federal appeals court will consider whether a heterosexual woman can sue her former employer for sexual orientation discrimination in a case that takes a new spin on legal debate over workplace LGBT rights.

The woman alleges she was discriminated against and ultimately fired for her Facebook post that disagreed with male-to-female transgender people using women's bathrooms, Robert Iafolla [reports today](#). She said she reasonably believed that federal civil rights law covers sexual orientation, while urging the U.S. Court of Appeals for the Fifth Circuit to overturn its decades-old decision saying it doesn't.

NATIONAL GRID WORKERS FACE LOCKOUT DAMAGE

Prolonged installation delays, poor customer service, rampant gas leaks, and foggy records of which gas lines are "live" and which are shut off. Those are some of the complaints customers filed with the Massachusetts utility regulator, the Department of Public Utilities, during National Grid's six-month lockout of 1,250 unionized workers, Andrew Wallender reports later today.



A protester holds a sign as locked-out workers picket outside the National Grid gas facility yard in Malden, Mass., on Sept. 5, 2018.

Photo by Pat Greenhouse/The Boston Globe via Getty Images

More than 50 complaints were filed to DPU regarding the lockout between June and November 2018. National Grid and two local unions representing the workers [struck a deal](#) last week to end the lockout. But as the workers return to the job by the end of the month, the complaints paint a picture of difficulties during the lockout that both parties must now start to mend.

OTHER STORIES WE'RE WATCHING

- LexisNexis and Lowe's Home Centers are accused of leave bias in new lawsuits filed in federal courts. They are two of the roughly 303 labor and employment cases initiated last week, Cynthia Harasty reports later today in "New Work Suits."

- The Center for American Progress is calling on state lawmakers to ban **noncompete** and “**no poaching**” agreements in a wide range of employment contracts, the liberal policy think tank says in a [report](#).
- The House passed a bill to extend an expiring **chemical facility security program**, with Democrats and Republicans hoping to buy time for negotiations on its future. Read Sam Pearson’s [story](#).
- The potential hazards to workers of **uranium mining** could become a bigger concern if a Supreme Court case allows a Virginia company to move forward with a mine. Virginia Uranium Inc. has for years sought to open a new underground mine in Pittsylvania County, Va., but it’s been stymied by a 36-year-old state law banning uranium mining over radioactive waste and public health fears. Fatima Hussein and Sam Pearson [report](#) on the case today.

AROUND THE WEB

- Amid a tight labor pool, developers, public officials, and community organizations are using major **commercial projects** to provide residents with training for **construction** careers, [the New York Times reports](#).
- Furniture maker Design Foundry plans to open a **manufacturing facility** in Catawba County, N.C., creating 202 jobs over five years, [the Charlotte Observer reports](#).
- Talk show host Jimmy Kimmel is vowing to employ a federal worker every night on his show until the **government shutdown** ends, [the AV Club reports](#).
- French multinational arms company Thales underpaid Australian workers by \$5.4 million over seven years, [the Guardian reports](#).

For all of today's Bloomberg Law headlines, visit [Daily Labor Report](#)



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From: [GovExec Breaking News](#)
To: [Ring, John](#)
Subject: House Approves Spending Bill With 1.9 Percent Civilian Pay Raise in Latest Attempt to Reopen Government
Date: Wednesday, January 9, 2019 5:28:07 PM

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GovExec Breaking News

January 9, 2019



[House Approves Spending Bill With 1.9 Percent Civilian Pay Raise in Latest Attempt to Reopen Government](#) // Erich Wagner

The House on Wednesday voted 240-188 to approve the first of four appropriations bills in Democrats' latest effort to end a partial government shutdown, now in its 19th day.

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From: [Martin, Andrew](#)
Subject: Legal News FYI 1-9-19
Date: Wednesday, January 9, 2019 7:37:43 AM
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Wednesday, January 9, 2019

Feeling the effects: A look at how the shutdown is playing out in the Yakima Valley

Yakima Herald-Republic (Yakima, WA) 09 Jan 2019 01:34

It's business as usual at the Yakima airport as a federal government shutdown enters its 19th day. Yakima Air Terminal Director Rob Peterson said he isn't seeing Transportation Security Administration "sick-outs" in Yakima, where Alaska Airlines operates...

Remedial Chevron January 9, 2019

North Carolina Law Review 08 Jan 2019 23:26

97 N.C. L. REV. 1 (2018) REMEDIAL CHEVRON* F. ANDREW HESSICK** Under Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., courts must defer to reasonable agency interpretations of statutes they are charged with administering. Although this...

Decertification Petition Was Improperly Dismissed, NLRB Rules

Proskauer 08 Jan 2019 20:10

Recently, we explored how the NLRB's rules for determining the timeliness of a representation can be confusing. Another area of complexity comes from whether a decertification petition will be processed in the face of unfair labor practice charges filed...

'The Marvelous Mrs. Maisel' Production Company Hit With Unfair Labor Complaint

Deadline Hollywood (Hollywood, CA) 08 Jan 2019 18:56

Nicole Rivelli/Shutterstock EXCLUSIVE: The Marvelous Mrs. Maisel is having labor pains. The Emmy-winning Amazon comedy series' production company, Picrow Streaming, has been accused by IATSE Local 52 in New York of making "coercive statements" and...

Uncertainty Returns to the Employment Landscape in 2019

National Law Review 08 Jan 2019 18:56

The midterm elections that took place in November 2018 have the employer community wondering what to expect in 2019. This article will examine how those elections might impact labor and employment policymaking in 2019. U.S. House of Representatives The...

Top Five Labor Law Developments for December 2018

National Law Review 08 Jan 2019 18:56

A U.S. Circuit Court of Appeals partially upheld the Obama-era standard the National Labor Relations Board (NLRB) adopted for determining whether two entities are joint employers under the National Labor Relations Act (NLRA). Browning-Ferris Industries...

The Two-Year-Old Trump National Labor Relations Board (NLRB)

Frost Brown Todd News 08 Jan 2019 18:07

Email Page During our last review we brought out the crystal ball to forecast what could be accomplished under the Trump NLRB. But after two years, there is no need for guessing. From appointments to decisions on joint-employer status and employee...

Joint Employment Under NLRA: Interpreting D.C. Circuit Court's Browning-Ferris Decision

JD Supra: Labor & Employment Law 08 Jan 2019 10:43

In a highly anticipated decision on the National Labor Relations Board's controversial 2015 joint-employer standard under the National Labor Relations Act, the federal appeals court in the District of Columbia has partially upheld the standard.... By:...

New Year, Old Test? NLRB's Continuing Efforts to Roll Back Obama-Era Joint Employment Standard Hit Another Roadblock

Foley & Lardner LLP News 08 Jan 2019 10:38

If the NLRB were a TV drama (imagine the ratings!), the most recent Christmastime decision by the D.C. Circuit Court of Appeals would have been a season-ending cliffhanger. It leaves the future of joint employment in doubt and is yet another reminder...



Legal News FYI monitors news, cases, and legislative developments of interest to the NLRB. To be added to or removed from the distribution list contact Andrew Martin. Please note that these are external links and the Agency takes no responsibility for their content.



From: [Morning Shift](#)
To: [Ring, John](#)
Subject: POLITICO's Morning Shift: Trump lies, no end in sight — Trump to the Capitol — Shutdown sting
Date: Wednesday, January 9, 2019 10:03:27 AM

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2018 Newsletter Logo: Morning Shift



01/09/2019 10:00 AM EDT

By REBECCA RAINEY (rrainey@politico.com; [@RebeccaARainey](#))

Editor's Note: This edition of Morning Shift is published weekdays at 10 a.m. POLITICO Pro Employment & Immigration subscribers hold exclusive early access to the newsletter each morning at 6 a.m. To learn more about POLITICO Pro's comprehensive policy intelligence coverage, policy tools and services, click [here](#).



QUICK FIX

President Donald Trump made several misleading statements in his presidential address last night and signaled no change to his position that the Democrats must give him \$5.7 billion for the border wall. The Democrats repeated that they won't. The partial government shutdown continues.

— **Trump will meet with Senate Republicans today** as he considers whether to secure funding for the border wall by declaring a national emergency.

— **Federal workers won't** be getting their paychecks on Friday.

— **More than 30,000 teachers, nurses and librarians in Los Angeles** could strike as soon as tomorrow if negotiations with the school district sour.

GOOD MORNING! It's Wednesday, Jan. 9, and this is Morning Shift, your daily tipsheet on labor and immigration news. Send tips, exclusives, and suggestions to raineey@politico.com, thesson@politico.com, ikullgren@politico.com and tnoah@politico.com. Follow us on Twitter at [@RebeccaARainey](https://twitter.com/RebeccaARainey), [@tedhesson](https://twitter.com/tedhesson), [@IanKullgren](https://twitter.com/IanKullgren) and [@TimothyNoah1](https://twitter.com/TimothyNoah1).

DRIVING THE DAY

TRUMP LIES — NO END IN SIGHT: Trump made several false or misleading statements about illegal immigration and border security in his televised prime-time presidential address last night, POLITICO's Ted Hesson reports. Democrats in a televised rebuttal reiterated their refusal to give in to Trump's demand for a \$5.7 billion wall as a condition of reopening the government. The impasse means the shutdown is likely to drag on and federal workers will have to keep waiting to get paid.

"The shutdown is creating real damage," Paul Shearon, president of the International Federation of Professional and Technical Engineers, the union representing workers at NASA, DOJ, NOAA and the EPA, said in a statement. "Donald Trump should be deeply concerned about the morale of his employees."

Read a fact check of President Donald Trump's speech from Ted Hesson [here](#).

Related: "A quick history of Trump's evolving justifications for a border wall," from [POLITICO](#)

THE SHUTDOWN LOWDOWN

TRUMP TO THE CAPITOL: Even as the president held off Tuesday night on declaring a national emergency to fund his border wall, Republican support for the move was growing, POLITICO's Eliana Johnson, Burgess Everett, and Heather Caygle report. Trump and Pence will travel to Capitol Hill today to meet with Senate Republicans as GOP leaders weigh the emergency declaration as "a way out of a shutdown fight they're losing." More from POLITICO [here](#).

SHUTDOWN STING: Government employees are all but guaranteed to miss their paycheck on Friday, POLITICO's Caitlin Emma reports. "At least 4,806 federal employees and contractors living in D.C., Maryland and Virginia have applied for unemployment benefits since the shutdown began on Dec. 22," Emma writes. Federal employees are still required to [pay thousands of dollars](#) for childcare services at on-site centers in federal buildings, even as they go without pay. HUD has also told lenders that landlords at properties insured by the Federal Housing Administration should dip into reserve cash so tenants aren't evicted during the shutdown. More on the shutdown pain [here](#).

Related read: "U.S. Chamber calls on lawmakers to reopen government," from [POLITICO](#)

UNIONS

LA STRIKE TALKS TODAY: The United Teachers Los Angeles are set to meet with the Los Angeles Unified School District today to avert a strike that could begin tomorrow of more than 30,000 teachers, nurses and librarians in the second largest school district in the country, Kyle Stokes reports for NPR. "The union has been holding out, primarily, for the district to reduce class sizes and hire more nurses, librarians and counselors," Stokes writes. Talks between the district and the union on Monday fell through after district officials brought more money to the table to address those concerns, but the union contends the offer actually increased the class size cap.

"Fundamentally something has to be done," Daniel Barnhart, secondary vice president at UTLA told Morning Shift. "We want to get an agreement but when you're three days out and they're moving backwards, that is not helpful." More from NPR [here](#).

DISCOURAGED WORKER COMEBACK: "Discouraged American workers are showing signs of returning to the labor market," POLITICO's Ben White reports. The rise in the labor force participation rate to 63.1 percent [last month](#) may help persuade the Federal Reserve to minimize interest rate hikes this year, White reports.

"Those who thought that the job market was at full capacity a year or more ago, and a lot of prominent people thought that, I think the evidence is they were wrong," Jared Bernstein, former chief economist to Vice President Joe Biden, said on the [latest edition of the POLITICO Money podcast](#). "There is more room to run in the American labor market than lots of economic people thought." More [here](#).

WAGES

NJ STALLS ON MINIMUM WAGE: New Jersey's Democratic Governor Phil Murphy was elected in 2017 on a promise to raise the state's minimum wage to \$15 an hour, but after more than a year of intra-party disagreements on the details, the state minimum remains \$8.85, POLITICO's Katherine Landergan reports. More [here](#).

WORKER SAFETY

KY LABOR CABINET REVIEWING SAFETY PROGRAM: Kentucky Labor Cabinet is reviewing "a number of unacceptable issues" in the state's occupational safety and health program following a [scathing report](#) from federal OSHA that found, among other things, that KY OSH was conducting "inadequate" worker fatality investigations. In an op-ed published in the Lexington Herald Leader, David Dickerson, acting secretary of the state labor cabinet, argued that the report showed "year-over-year improvements in worker safety" and said the cabinet is working to address the problems.

Federal law encourages states to implement their own safety and health programs by offering federal funding up to 50 percent. But the 22 state programs, including KY OSH, must be at least as effective as federal OSHA's rules. If not, the federal agency can take over. Still, it's unlikely federal OSHA will intervene, given its strapped budget. Read the op-ed [here](#).

OSHA NOMINEE "FRUSTRATED" OVER PROCESS: The Trump administration's nominee to lead the Occupational Safety and Health

administration, Scott Mugno, is "extremely frustrated by the Senate's inability to get its act together to confirm his nomination," a source close to the nominee tells Morning Shift. Following a December [confirmation fight in which](#) Democrats blocked expedited confirmation of the Trump administration's labor nominees unless the Senate also confirmed two Democrats, Mugno now must be renominated by the White House for a second time.

The sluggish process has worn down other nominees. Daniel Gade in December withdrew his name from consideration for the Equal Employment Opportunity Commission citing a "political mess" in the Senate. However, the source notes that Mugno is in different circumstances than Gade, because he is retired and not passing up potential business opportunities.

COFFEE BREAK

- "Elizabeth Warren says the minimum wage no longer keeps a single mother out of poverty. Is that true?" from [Boston.com](#)
- "Trump's Metaphysical Wall: An Investigation," from [POLITICO Magazine](#)
- "Mich. Gov. Beefs Up Bias Protections For LGBT State Workers," from [Law360](#)
- "What the Government Shutdown Looks Like Inside Federal Prisons," from [The Marshall Project](#)
- "Asylum seekers find it's catch and can't release fast enough," from [The Washington Post](#)

THAT'S ALL FOR MORNING SHIFT!

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From: [GovExec Today](#)
To: [Ring, John](#)
Subject: Primetime addresses show little progress toward ending shutdown; shutdown complicates retirement plans for some
Date: Wednesday, January 9, 2019 5:32:01 AM

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GovExec Today

January 9, 2019



***Editor's note:** The partial government shutdown affects more than furloughed feds. Tell us how it is affecting your work and your agency's mission by emailing webmaster@govexec.com.*

[In Primetime Addresses, Trump and Democrats Show No Progress Toward Ending Shutdown](#) // Eric Katz

Both sides highlight federal employees, but for very different reasons.

[Shutdown Complicates Federal Retirement Plans for Some](#) // Erich Wagner

Although the Office of Personnel Management's Retirement Services division is not affected by the lapse in appropriations, retirements may be delayed by agency HR furloughs.

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Reserve your spot now for the 2019 Esri Federal GIS Conference taking place at the end of this month in Washington, D.C. Join 4,500 of your peers, government thought leaders, GIS innovators, and subject matter experts from Esri for a day of professional development workshops, hands-on-learning labs, networking, and much more. View the detailed agenda for more information. Registration is free for federal employees, but spaces are limited, so be sure to register now!

[Register Now](#)

[As Jan. 11 Pay Deadline Looms, GOP Senators Express Increased Urgency in Ending Shutdown](#) // Eric Katz

One Republican says he may introduce legislation to ensure certain impacted feds are paid throughout a shutdown.

[Advocacy Group Mimics Consumer Bureau's Discontinued Student Loan Report](#) //
Charles S. Clark

The private loan servicing company drawing the most complaints is Navient.

[White House Takes Risk Directing IRS to Un-Furlough Staff to Process Tax Refunds](#) //
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